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In The

Supreme Court of the United States

JASON "K" JENSEN,

Petitioner,

v.

THE STATE OF UTAH,
UTAH STATE SUPREME COURT,
UTAH STATE LEGISLATURE, and
UTAH STATE BAR

On Petition For Writ Of Certiorari
To The Utah Supreme Court

PETITION FOR WRIT OF CERTIORARI

Jason K Jensen
Petitioner Pro Se
180 South 300 West, Suite 210
Salt Lake City, Utah 84115
(801) 328-8888

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QUESTIONS PRESENTED

In the State of Utah, by State Constitutional amendment in 1985, only the Utah Supreme Court by court rule has the power to govern the practice of law, including admissions to the bar. In this matter, The Petitioner requested of the state supreme court for a waiver of the ABA-approved law degree requirement to sit for the bar examination conducted by its agent, the Utah State Bar. The Bar rejected the Petitioner's application contrary to the plain reading of Rule Three for admissions. The Bar is charged with following the rules promulgated for the Bar by the supreme court. Without affording the Petitioner due process, the court summarily rejected the request. The Petitioner has the right to sit for the bar examination, has the right to an open and fair proceeding, as he presents herein this petition:

With particularity, the Questions presented are, to wit:

1. Does the conveyance of a legislative function from the Utah State Legislature to the state supreme court over the practice of law, including the admissions to, constitute a violation of the Separation of Powers doctrine? Who would be the expositor of justice in this forum?

2. Does the Utah State Bar exercise a prejudicial advantage over opponents in litigation before the Utah State Supreme Court due to the Bar integration, creating an intimate relationship between the bar and the court? . . . , especially when in matters of original jurisdiction in the state supreme court where there exists no constitutional right of appeal?

3. Under the existing circumstances, does the Petitioner have the right to sit for the Utah State Bar examination?

4. Did the state supreme court, the court of original jurisdiction, deprive the Petitioner of due process when he was denied his day in court or because its refused to refer the matter to the Bar Commission for consideration?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS iii

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 3

A. The 1985 Constitutional Amendment Conferring The State Of Utah's Legislative Power Over The Practice of Law To The Utah Supreme Court 3

B. The Integration Of The Utah State Bar Under The Supervision Of The Utah Supreme Court 4

C. Mr. Jensen's 1996 Application To The Bar For Examination 4

D. Mr. Jensen's 1996 Petition For Waiver In The Third District Court 4

E. The Bar Prints an Editorial Regarding Its Position Against A Paralegal Who Had Been Engaged Previously In The Unauthorized Practice of Law 5

F. The Utah Legislature's Repeal of Title 78, Chapter 10, Pertaining To The Practice Of Law. . . 5

G. Mr. Jensen's Petition For A Waiver Of The Law Degree Requirement And The Utah Supreme Court's Handling Of The Petition 6

REASONS FOR GRANTING THE PETITION. . . 9

Certiorari Should Be Granted In This Case To Correct Errors Against An Individual's Rights Guaranteed By The U.S. Constitution And For The Utah Supreme Court's Decisions Which Are Contrary To The Decisions Of This Court, and Of Its Prior Decisions. . . . 9

A. Preface. 9

B. Separation Of Powers Doctrine. 11

C. The Utah State Bar's Delegated Powers 13

(1) The Bar Accepted Authority 13

(2) The Bar's Use Of Authority. 18

D. Mr. Jensen's Right To Full And Open Proceeding. 20

E. Mr. Jensen's Right To Sit For The Bar Examination 22

CLOSING AND RESERVATION. 25

CONCLUSION. 25

APPENDIX. . . . . App. 1

ORDERS OF THE STATE COURT.. ..... App. 1

BAR REJECTION LETTER ..... App. 4

STATE CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES ..... App. 6

CHAPTER 16. UTAH BAR RULES FOR INTEGRATION AND MANAGEMENT ..... App. 12

PLEADINGS ..... App. 28

AMERICAN BAR ASSOCIATION'S STANDARDS FOR APPROVAL OF LAW SCHOOLS ..... App .84

UTAH STATE BAR'S RULES GOVERNING ADMISSION TO THE UTAH STATE BAR .... App. 101

PRESTON REGEHR'S HEARING NOTICES... App. 106

UTAH STATE BAR'S EDITORIAL..... App. 108

SENATE BILL 13 ..... App. 110

TABLE OF U.S. SUPREME COURT JUSTICES. App. 112

GLOSSARY ..... App. 131

TABLE OF AUTHORITIES

Page

Adams v. Tanner, 244 U.S. 590, 61 L. Ed 1336, 37 S. Ct. 662. 23

Barnard v. Sutliff, 846 P.2d 1229 (Utah 1992). . . 14

Board of Commissioners of the Utah State Bar v. Petersen, 937 P.2d 1263 (Utah 1997). 12

Clayton v. Bennett, 5 Utah 2d 152, 298 P.2d 531 (Utah 1956). 13, 15

Commentaries on the Laws of England, Sir William Blackstone (1772). 22

Constitutional Law, 11 Am. Jur. § 336 23

Federalist, No. 47, *The*, James Madison, Jr 11

Federalist, No. 48, *The*, James Madison, Jr 11

Horton v. Royal Order of the Sun, 821 P.2d 1167 (Utah 1991). 21

Koch v. Telluride Power Co., 116 Utah 237, 209 P.2d 241 (Utah 1949). 18

Leetham v. McGinn, 524 P.2d 323 (1974). 9

Lyon V. Burton, 5 P.3d 616 (Utah 2000) 21

Madison Proposing Bill of Rights to the House (1789) 12

New State Ice Co. v. Liebmann, 285 U.S. 262, 76 L. Ed. 747, 52 S. Ct. 371 23

Rowell v. State of Agriculture, 99 P.2d 1 (Utah) . 13

Willner v. Committee on Character and Fitness of New York, 373 U.S. 96, 80 S. Ct. 1175, 10 L. Ed. 2d 224 . . . . . 8, 20

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH

Jason K Jensen (hereinafter the "Petitioner") respectfully petitions for a writ of certiorari to review the judgment of the Utah Supreme Court in this case.

OPINIONS BELOW

The decisions of the Utah Supreme Court denying the Petitioner a waiver of the law degree requirement and a hearing to present evidence necessary to rebut Rule 3-1(3) of the Rules Governing the Admission to the Utah State Bar are unpublished decisions, and are contained in the Appendix at App. 1-3.

JURISDICTION

The final decision of the Utah Supreme Court denying the Petitioner a hearing was entered on July 17, 2001. (App. 1-2). The jurisdiction of this Court to review this matter is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following Constitutional provisions are involved in this case:

The Due Process clause of the Fifth Amendment, which provides, inter alia:

> No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Jury Trial clause of the Seventh Amendment, which provides:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

The Reservation clause of the Tenth Amendment, which provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The Privileges and Immunities clause of the Fourteenth Amendment, which provides, in Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The state provisions and statutes involved are lengthy and thus are listed herein by citation only:

> The state Due Process clause, Article I, Section 7 of the Utah Constitution. (App. 6).

The state Open Courts clause, Article I, Section 11 of the Utah Constitution. (App. 6).

The state Distribution of Powers clause, Article V, Section 1 of the Utah Constitution. (App. 6).

The state Supreme Court Jurisdiction clause, Article VIII, Section 3 of the Utah Constitution. (App. 7).

The state Supreme Court Rule-Making clause, Article VIII, Section 4 of the Utah Constitution. (App. 7).

The state District Court Jurisdiction clause, Article VIII, Section 5 of the Utah Constitution. (App. 8).

The state Adoption of Common Law Statute, Utah Code Ann. § 68-3-1 (1953, as amended). (App. 8).

The state Supreme Court Jurisdiction Statute, Utah Code Ann. § 78-2-2 (1953, as amended). (App. 8-11).

STATEMENT OF THE CASE

This case arises from the Utah Supreme Court's denial of a hearing and for the denial of the Petitioner's petition for a waiver of the ABA-approved law degree requirement so that he may sit for the Utah State Bar Examination.

--Relevant Events Occurring (No Hearing).--

(1) The 1985 Constitutional Amendment Conferring the State of Utah's Legislative Power of the Practice of Law to the Utah Supreme Court.

In 1985, the Utah Constitution was amended conferring to

the Utah Supreme Court the legislative, or law-making, authority over the practice of law. This authority includes the admissions to the practice of law. (App. 7 & 12-27).

B. The Integration Of The Utah State Bar Under The Supervision Of The Utah Supreme Court.

Chapter 16 of the Utah Court Rules, for the Utah State Bar's integration and management was established and made effective July 1, 1981. This rule was later amended effective September 25, 1985; May 27, 1993; June 15, 1994; March 26, 1996; May 15, 2000; and February 20, 2001. The present version is in Appendix 12-27.

The effect of Rule 16, creates an intimate relationship between the Utah Supreme Court and the Utah State Bar.

More importantly, within Rule 16, the state supreme court delegated all of its rule-making and legislative authority to the Utah State Bar, excepting for three areas which are specifically reserved to the court. (App. 16).

C. Mr. Jensen's 1996 Application To The Bar For Examination.

In 1996, the Petitioner applied for admissions to the Utah State Bar. The application was returned on the sole basis that he lacked a LL.B. or J.D. degree from an ABA-approved law school. The letter was not by way of the Utah Supreme Court. (App. 4-5).

D. Mr. Jensen's 1996 Petition For Waiver In The Third District Court, For Salt Lake County, In And For The State of Utah.

In response to the Bar's rejection, the Petitioner filed a complaint in the Third District Court, Salt Lake Department, in and

for the State of Utah. The complaint sought declaratory relief and an injunction seeking permission to sit for the Utah State Bar's Bar Examination. In response to the complaint, the Utah State Bar filed a Motion to Dismiss for want of subject matter jurisdiction. The Bar claimed that Mr. Jensen could not address the matter in district court as the Utah Supreme Court, under Article VIII, Section 4, of the Utah constitution, was the court having the exclusive jurisdiction over the subject "practice of law, including admissions." (App. 7). At a hearing on the motion, District Court Judge David S. Young granted the motion. The case was dismiss without any address on the merits.

E. The Bar Prints An Editorial Regarding Its Position Against A Paralegal Who Had Been Engaged Previously In The Unauthorized Practice Of Law.

On May 27, 1999, the Bar's General Counsel, Katherine A. Fox published an editorial in the Messenger-Enterprise in the State of Utah. (App. 108-109). The editorial characterizes a paralegal's J.D. degree as "merely an academic achievement and does not confer the right to practice law in Utah . . . ."

F. The Utah Legislature's Repeal of Title 78, Chapter 10, Pertaining To The Practice Of Law.

During the 2001 General Session of the Utah State Legislature, State Senator Terry R. Spencer submitted Senate Bill 13 to repeal the entire Attorney and Counsel Chapter of the Judicial Code (Title 78, Chapter 10). The bill was passed on January 24, 2001, and went into effect on April 30, 2001. The bill included Section 78-51-10 dealing with qualifications for admissions to the Bar. (App. 110-111). No other legislation was effected by this bill.

G. Mr. Jensen's Petition For A Waiver Of The Law Degree Requirement And The Utah Supreme Court's Handling Of The Petition.

On May 2, 2001, the Petitioner filed a petition with the Utah Supreme Court seeking a waiver of the ABA-approved law degree requirement of the Rules Governing Admission to the Utah State Bar, so that he may sit for the bar examination.[1] (App. 28-34).[2] His request was intended to be *ex parte*. Accompanying his petition was an Application for Ex Parte Proceeding, a memorandum and a Request for Hearing to exclude the Bar from engaging the Petitioner before the court. (App. 36-46). This Application was submitted upon his notification by the clerk's office that a copy of the Petition would have to be delivered to the Utah State Bar. (App. 35). The Application was the only motion ever filed by either party in this matter before the court took the matter under advisement; the motion was submitted pursuant to Rule 4-501 of the Utah Code of Judicial Administration. The motion claimed that the Bar was prohibited from responding for primarily two reasons: (1) that it lacked standing to file a response because the power to grant waivers was a court function and not within the Bar's purview, and (2) to file a response would be pernicious as the bar enjoys a prejudicial advantage over the Petitioner in light of the

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1 Rule Three, Section 3-1 reads, "3. Have graduated with an LL.B, J.D. or equivalent degree from an approved law school.

2 He plead that he possesses the necessary skills and experience that has prepared him to engage in the competent practice of law. He proclaimed his legal knowledge to be the equivalent to other students. His private study of the law has been as substantial as the American Bar Association requires of law schools in their curriculum.

Utah Supreme Court's intimate relationship with the Utah State Bar. The Bar possesses delegated regulatory power over the practice of law because of the court rules implemented by the court through the court's use of its legislative authority. (App. 21-27).

Upon receipt of the Petitioner's pleadings on May 7, 2001, Katherine A. Fox, the Utah State Bar's general counsel, filed a letter addressed to the Utah Supreme Court's clerk, Pat Bartholomew. (App. 47). The letter requested instruction from the court pertaining to the Petitioner's petition. Ms. Fox apparently didn't know how to respond to the Petitioner's pleadings, or whether the Bar should even file a response at all.[3] Her letter was ex parte–Ms. Fox did not provide the Petitioner with a copy of the letter. It was not until on or about May 15, 2001 when the Petitioner discovered the letter in the court's file upon his review.

Then without any indication known to the Petitioner regarding the court's wishes, Ms. Fox filed the "Response to Verified Petition for Admission to the Utah State Bar [sic]"[4] on

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3 Note: The letter is cast in negative light apparently an attempt to prejudice the court against the Petitioner. Other than the 1996 attempt to obtain an injunction, the Petitioner knows of no other dealings that the Bar could be referring to against him.

4 The Petitioner did not file a Petition seeking admission to the Bar. Rather, he has clearly plead for a waiver of the law degree requirement. He believes he possesses the requisite knowledge necessary to pass the bar examination due to his schooling, training, experience, and self-study, under the tutelage and supervision of his practicing attorney, David Bruce Oliver. Moreover, the Petitioner has learned discipline and thoroughness during his 4 ½ year military tour of duty of duty where he has received three (3) Navy Achievement Medals, the third received for his

June 1, 2001. The response discouraged a waiver from the court relying on irrelevant information pertaining (1) statistics collected from other jurisdictions and (2) pertaining to the one waiver ever granted in the State of Utah. Thereafter, the court set the matter on its law and motion calendar for June 18, 2001 without the benefit of oral arguments. In light of the notice's ambiguity (whether it was to be dispositive or regarded the Petitioner's Application for Ex Parte Proceedings) and because no opportunity for oral argument would be afforded, the Petitioner filed a brief in support of his petition.

On June 18, 2001, in a decision provided by Justice Christine Durham, the court ruled that the standard adopted by the court applies equally to all applicants and that the Petitioner failed to show an exceptional circumstance.

Upon a timely filed "Motion to Alter or Amend Judgment De Novo En Banc," pursuant to Rule 59 of the Utah Rules of Civil Procedure, the Petitioner sought clarification and a review of his petition, de novo, by the entire court. As authority for a review, the Petitioner relied on this Court's decision, *Willner v. Committee on Character and Fitness of New York*, 373 U.S. 96, 80 S. Ct. 1175, 10 L. Ed. 2d 224, quoting:

> The right to practice law is neither greater nor less than the right to engage in other occupations, businesses or trades, for the right to seek and retain employment is shared by all equally and to be equal must be upon the same conditions. It cannot be treated as a matter of grace or favor.

The matter was once again set on the court's law and motion calendar. The court considered the matter on July 16, 2001, again without benefit of oral arguments. In his motion, he even requested that if the court was not inclined to give him a trial then it could

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participation in the Persian Gulf War.

defer the matter to the board of commissioners of the Utah State Bar.[5]

The court on July 16, 2001, issued another decision, again declining the Petitioner of a fair hearing or of his waiver to sit for the bar examination. This time the court claimed, inter alia, that (1) the ABA-approved law degree requirement was a prerequisite, (2) the standards of the ABA were being applied equally to all applicants, and (3) the court was not an evidence-taking tribunal. (App. 2).

Pursuant to the Utah constitution, when the Utah Supreme Court is exercising original jurisdiction, there is no right of appeal. (App. 8). This Petition for Certiorari followed.

REASONS FOR GRANTING THE PETITION

Certiorari Should Be Granted In This Case To Correct the Utah Supreme Court's Errors Regarding An Individual's Rights Guaranteed By the U.S. Constitution And For Which Is Contrary To Other Decisions Of This Court, and Of Its Own Decisions.

A. Preface.

This Court in *Leetham v. McGinn*, 524 P.2d 323 (1974):

> The right to engage in a profession or occupation is a property right, which is entitled to protection by the law and the courts. There are some professions and occupations, which require special skill, learning and experience, and the

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5 Attorney Regehr was given two hearings on his petition for waiver. (App. 106-107)

> public ordinarily does not have sufficient knowledge to determine the qualifications of the practitioner. To protect the public health, safety and welfare, the legislature under the police power may establish reasonable standards with which one must comply as a prerequisite to engage in certain occupations. However, under the police power, the means selected must bear a real and substantial relation to the objective sought to be attained.

Admittedly, the legal profession is one such occupation that does require regulation to the protect the public from attorney incompetence. In this petition, the Petitioner does not challenge the good intention of protecting the public from those who lack the necessary knowledge, skills, and experience. Thus the purpose behind the establishment of the American Bar Association as explained in the Foreword of the ABA's Standards for Approval of Law Schools is accurate, generally speaking. (App. 84-100). However, such regulation is not and should not be absolute in every case. It is still subject to constitutional scrutiny in light of an individual's Rights reserved to the people. Upon the presentation of extraordinary circumstances, the standard must maintain reasonableness when confronted by the presented facts by an individual or the "societal regulation" must yield to the rights of that individual. In this Petition, the Petitioner will show that requiring him to acquire a law degree from an ABA-approved law school is an unreasonable requirement under his extraordinary circumstances.

In this matter, the Petitioner invokes the Reservation clause of Tenth Amendment, the Privileges and Immunities clause of the Fourteenth Amendment, and their included protections of the Due Process clause of the Fifth Amendment and the Trial by Jury clause of Seventh Amendment in order to present such extraordinary circumstances. Extraordinary circumstances exist in the Petitioner's situation that entitle him to the pursue the upright and lawful calling as an attorney, within the legal profession. Presently, the Petitioner has been engaged in the practice of law as a certified

paralegal for nearly eight years now. If through his employment, the Petitioner has acquired the necessary knowledge, skills and experience to engage in the private practice of law competently, he should not be barred from presenting his case fully to an impartial tribunal so he can sit for the Utah State Bar examination.

For the violation of these absolute rights of men guaranteed by the Constitutions, this Court should issue a Writ of Certiorari to the Utah Supreme Court.

B. Separation of Powers doctrine.

In this matter, Mr. Jensen has preserved the issue of the Utah Supreme Court's impartiality. The Utah Supreme Court apparently has exhibited a bias in favor of the Utah State Bar, which is believed to have been created from a violation of the Separation of Powers doctrine. It is well-established that the Framers of the Constitution clearly intended a division of power to avoid any tyrannical exercise of power by any one branch of the government. As well, this same principle was clearly intended by the Framers of the Utah Constitution under Article V, Section 1. (App. 6).

In *The Federalist*, No. 47, James Madison said:

> The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny.

Id. Mr. Madison, further said in *The Federalist*, No. 48:

> [U]nless these departments be so far connected and blended as to give each a constitutional control over the others, the degree of separation which the maxims requires, as essential to a free government, can never in practice be duly

maintained.

Id. Moreover, during the presentation of the Bill of Rights, Mr. Madison argued on the floor:

> The powers delegated by this constitution, are appropriated to the departments to which they are respectively distributed: so that the legislative department shall never exercise the powers vested in the executive or judicial; nor the executive exercise the powers vested in the legislative or judicial; nor the judicial exercise the powers vested in the legislative or executive departments.

Madison Proposing Bill of Rights to the House, 1789.

Contrary to this principle, all of the power over the practice of law was conferred from the Utah State Legislature to the Utah Supreme Court by constitutional amendment in 1985. *Board of Commissioners of the Utah State Bar v. Petersen*, 937 P.2d 1263 (Utah 1997). This total authority over the practice of law in the State of Utah is not exclusive to the representation of parties in matters of law before the court (as officers of the court), but **all** of the practice of law within the State of Utah, including the admissions to practice–historically a legislative function. Even well-intended third-party insurance adjustors have not been without attack by the high court and the Bar for allegedly engaging in the unauthorized practice of law. The insurance industry is within the purview of the state legislature to regulate and to define what is permitted conduct within its control.

Inasmuch as it appears that there is no adequate division of power over the practice of law and what constitutes lawyer practices versus other professional practices, the 1985 amendment to Article VIII, Section for should be declared unconstitutional. Hence, this Court should grant the Petitioner's request for a writ of certiorari to the Utah Supreme Court.

C. The Utah State Bar's Delegated Powers.

(1) The Bar's Accepted Authority.

Meanwhile, once vested with its newly acquired constitutional authority, the Utah Supreme Court delegated all of this power, but concerning three areas, to the Utah State Bar, a quasi-governmental agency.[6] Similarly, the, Utah Supreme Court in *Clayton v. Bennett*, 5 Utah 2d 152, 298 P.2d 531 (1956) has addressed this question but when the state legislature delegated its authority. That court stated:

> The question of delegation of Legislative power was presented to this court in the case of *Rowell v. State of Agriculture*, [98 Utah 353, 99 P.2d 1, 3,] it was there stated:
>
> > That the legislature may not surrender or delegate its legislative power is elemental.
> >
> > It may, however, provide for the execution through administrative agencies of its legislative policy, and may confer upon such administrative officers certain powers and duty of determining the question of the existence of certain facts upon which the effect or execution of its legislative policy may be dependent
>
> This accords with the generally accepted view.

(Emphasis added). In this matter, the Utah Supreme Court has done more than this generally accepted view. In Rule 16, Utah State Bar Rules for Integration and Management, the state supreme court delegated all of its power over the practice of law, including

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6 The issue of the Bar's involvement is more fully discussed in the following section.

admissions, to the Utah State Bar, except concerning three areas. As stated above, this delegation was without constitutional authority. The court specifically reserved the authority to: (1) approve Bar admission and licensure fees; (2) approve all rules and regulations formulated by the Board for admissions, professional conduct, client security fund, fee arbitration, procedures of discipline and disability, legislative activities, unauthorized practice of law, and Bar examination review and appeals; and (3) establish appropriate rules and regulations governing mandatory continuing legal education. Obviously, these reservations are not consistent with the court's decision in *Rowell*. The powers the court has delegated to the Utah State Bar are broader sweeping. Nevertheless, the issue of waivers is not even specifically mentioned in the Integration Rule, therefore it is unclear who is authorized to grant waivers of the rules. The plain reading of that rule suggests that it is the Bar who possesses that power. However, the Utah Supreme Court clarified in *Barnard v. Sutliff*, 846 P.2d 1229 (Utah 1992), that it alone has the authority to hear modifications of the rules concerning general procedures of the Bar.

Nevertheless, there exists no court rule which outlines policies, procedures pertaining to hearings, waivers, or judicial review. The decision in *Barnard* is contrary to the Integration Rule. As well, the conduct of the Bar is inconsistent with the Rules Governing the Admission to the Bar. In light of the existing rules governing procedures, there is no appearance of fairness, and there is no right of appeal. Therefore there is no due process protection for applicants seeking redress and there is no predictability of redress effort, unless one predicts futility and frustration.

In the Petitioner's efforts to sit for the bar examination, the Utah State Bar has arbitrarily rejected the Petitioner's application for bar admission citing only noncompliance with the Admission Rule Three, § 3-1(3). (App. 4-5). The letter's author clearly failed to consider the rule's plain meaning at all. Under the Admission Rule Three, § 3-1(3), the Bar has a duty to recommend or not to recommend certification to the Utah Supreme Court–that is all.

Rather than handling the Petitioner's application accordingly, the Bar simply returned the application and fee to the Petitioner. The Petitioner believes that payment of the $400.00 fee alone entitles the Petitioner to sit for the bar examination.

Thereafter, each time the Petitioner has sought a judicial review, the Bar opposed. The Bar's actions have been far too draconian. The first attempt in the district court resulted in the dismissal for want of subject matter jurisdiction at the Bar's request. The second attempt–in 2001, before the state supreme court–resulted in a denial of his Petition without being afforded a full and fair opportunity to present his case of extraordinary circumstances. In the latter case, the Utah Bar's sole defense was the use of pass/fail statistics from other jurisdictions who allow for "law office-trained" applicants. Mindfully–from a mere statistical analysis, even the Petitioner concedes that an ABA-approved law school education may be the best means to prepare for the practice of law. The chances of passing the exam is notably higher.[7] That is the purpose of a law school–to teach competency. (App. 95). The ABA's belief is clearly stated in the Foreword of the Standards for Approval of Law Schools. The ABA states:

> The American Bar Association believes that every candidate for admission to the bar should have graduated from a law school approved by the ABA, that graduation from a law school alone should not confer the right of admission to the bar, and that every candidate for admission should be examined by public authority to determine fitness for admission.

Id. (App. 86). Analogously, the Utah Supreme Court has considered similarly the application process regarding the dentist profession. In *Clayton v. Bennett*, 5 Utah 2d 152, 298 P.2d 531

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7 However, what of those people in the pass percentile? What of their Rights?

(1956), that court reasoned:

> The statute provides that the examination shall be before a board of practicing dentists, that the applicant must be a graduate of a reputable dental school, and that he must be of good moral character. Thus the general standard of fitness and the character and scope of the examination are clearly indicated. Whether the applicant possesses the qualifications inherent in that standard is a question of fact. * * * The decision of that fact involves ordinarily the determination of two subsidiary questions of fact: The first, what the knowledge and skill is which fits one to practice the profession; the second, whether the applicant possesses that knowledge and skill. The latter finding is necessarily an individual one. The former is ordinarily one of general application. Hence it can be embodied in rules.

In this matter governing the admissions for the practice of law, it is the purpose of the bar examination to measure the knowledge and skills of the applicant. It is not intended to measure the teaching ability of the law school institution.[8] (App. 95) In other words the trier of fact must measure the individual's ***acquired*** knowledge and skills for competency to satisfy the latter of the two subsidiary findings regardless of the source of the knowledge. It is not a test to measure the law school for its proficiency. To claim the law degree requirement as a prerequisite is an unreasonable infringement upon this candidate's Rights. One who in an upright

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8 However, the ABA will admit that its Rule 301-1 interpretation instructs to the contrary. The interpretation reads:

> Among the factors to be considered in assessing the extent to which a law school complies with this Standard are the attrition rate of the school's students, and the bar passage and career placement rates of its graduates. (August 1997)

fashion acquires the same knowledge, skills and experience through the means of practical study and real situation application of the law can become just as competent as a candidate who did attend an ABA-approved law school–in some cases even more so. For instance, law school students receive only limited interaction with would-be clients. Also, most likely none of them can file a proper petition for writ of certiorari. Nevertheless, since only ABA-approved law graduates have been accepted to the practice of law in the State of Utah since July 1932, what is to explain the high number of attorneys who are disciplined every year? Obviously, their schooling wasn't enough to ensure the competent practice of law. Evidently there are exceptions to general rule after the passage of the bar examination, as well.

In this matter, the Petitioner fully believes he is equally capable of engaging in the practice of law competently as any other student applicant can assure. The Petitioner has engaged in nearly eight years practical experience in his law office, he has formerly studied law for three-years in paralegal classes in college, and he has since continued with legal education as required of licensed attorneys through CLE courses. Even the Bar admitted in its responsive pleading of the state supreme court, "that substantive experience in [the] actual practice of law is deemed to be an acceptable substitute for a quality law school education. (App. 48). Admissions Rule Four states, in pertinent part, "an attorney applicant needs to have practiced four of the five years immediately preceding the filing of an application and be in 'good standing.'" Obviously, as a nonlawyer–who has been engaged in authorized practice of law "under attorney supervision" or as a paralegal–the Petitioner has substantial experience that has prepared him for his own private practice of law. The two practices within the legal profession are very similar. The difference between the paralegal practice and an attorney practice is that the Bar tracks the attorney's "standing." The attorney-client relationship includes the attorney's staff. The Bar permits paralegals to assist an attorney in these law related functions so long as the attorney is held accountable for the assistant's conducts. In the case of the Petitioner, Attorney Oliver

has never been disciplined for the Petitioner's conduct.

However, in this matter the Petitioner is not asking for permission to practice law. He is merely requesting to sit for the bar examination in order to test his level of knowledge and skill. In light of the existing circumstances, it is believed that the Petitioner can and will pass the bar examination. Afterwhich, then other options may need to be addressed at that time. Nevertheless, upon successful licensure, Mr. Jensen has been guaranteed career placement as an attorney-at-law with his law firm at D. Bruce Oliver, P.C.

Meanwhile, it was the Utah Supreme Court, in *Koch v. Telluride Power Co.*, 116 Utah 237, 209 P.2d 241 (Utah 1949), that reasoned "[the] knowledge through employment in the industry" is comparable to college training with a degree. And yet when the Petitioner relied on the *Koch* case before the court, the matter went silently ignored by the court. Wherefore, being yet another example of how the state supreme court has arbitrarily decided this matter contrary to other rulings of the court, the Petitioner is entitled to a writ of certiorari to the Utah Supreme Court.

(2) The Bar's Use of Authority.

In 1996, before the district court, the Bar obtained an order of dismissal for want of subject matter jurisdiction, claiming that the state supreme court was exclusive to consider matters dealing with bar admissions pursuant to Article VIII, Section 4 of the Utah Constitution. This argument prevailed even though it is contrary to two Utah Constitutional Jurisdiction provisions set forth in Article VIII, Sections 3 and 5. (App. 7-8). Meanwhile, it is Section 5 that provides that jurisdictions shall be provided by statute. (App. 8).[9]

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9 It should be noted though upon review of these provisions fail to address the jurisdiction of the relief the Petitioner has attempted in the courts of Utah. His

Apparently, this is to provide some control of the courts by the state legislature. Nonetheless, in the matter at hand, the Petitioner again brought his petition, pro se, before the Utah Supreme Court. That court required the Petitioner to notify the Bar. (App. 35). Reluctant, the Petitioner notified the Bar and then filed an Application to Proceed Ex Parte.[10] (App. 36-45). As stated above, this would be the only motion ever filed in this case prior to the court taking the matter under advisement.

Thereafter, the Bar communicated with the court, ex parte, requesting instruction on the Petitioner' cause. (App. 47). Without further a response being made known to the Petitioner, the bar later filed a Response and the court took the matter under advisement on June 18, 2001.[11] The practice of the bar before the court was unduly prejudicial and pernicious.[12] The bar apparently misrepresented the Integration Rule (rule 16) and acted in disregard of the Rules of Professional Conduct of which it is charged with enforcing among fellow bar members. The relevant rules were

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frustrations have been that (1) the district court lacks jurisdiction to consider the subject matter; (2) the supreme court refuses to consider the matter; and (3) the bar lacks the authority to do anything. Where is the due process protection? What of the right of redress?

10 Knowing of the Bar's integration and intimate relationship with the state supreme court, and the bar's apparent successful track record before the Utah Supreme Court, Mr. Jensen believed there to exist an apparent prejudice and did not desire having the Bar intervene.

11 The response assumes all of the facts in the petition are true as there is no denials of any allegation.

12 E.g., the ex parte letter which was suggestive of prior wrongs or problems. Ms. Fox characterizes the Petitioner's past business with the bar as "dealings."

addressed in the Petitioner's Application for Ex Parte Proceedings, in the Supreme Court. (App. 36-45).

The confrontation of the bar in litigation before the Supreme Court against the Petitioner is unconstitutional in that it violates the Rights of the party opponent to a full and fair proceeding before an impartial tribunal. These Rights are secured under the Privileges and Immunities clause, and the Due Process clause, which are further assured in the Utah Constitution to its citizens. The court in deciding the Petitioner's matter without benefitting him with a fair opportunity for his "day in court" deprived him of these Rights. Inasmuch, this Court should grant certiorari to the Utah Supreme Court for these reasons.

D. Mr. Jensen's Right to Full and Open Proceeding.

In this matter, as provided by the Due Process clauses of both Constitutions and the state's Open Courts clause, the Petitioner was entitled to a full and fair hearing regarding his Petition before the Utah Supreme Court. The Court chose to remain ignorant claiming it was not an evidence-taking tribunal.[13] In *Willner v. Committee on Character and Fitness of New York*, 373 U.S. 96, 80 S. Ct. 1175, 10 L. Ed. 2d 224, this Court ruled that a petitioner was entitled to a full and fair opportunity to present his case claiming:

> The right to practice law is neither greater nor less than the right to engage in other occupations, businesses or trades, for the right to seek and retain employment is shared by all equally and to be equal must be upon the same conditions. It cannot be treated as a matter of grace or favor.
>
> The Petitioner has that Right to pursue his attorney career,

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13 As an alternative, the Petitioner asked that court to defer evidence-gathering to the Bar to consider. Likewise, that request was ignored.

a lawful calling, and the State of Utah should not preclude him of the opportunity to show that he is fully capable of engaging in the practice of law competently. Inasmuch, he should not have been precluded by either the Utah State Bar or the Utah Supreme Court from testing his vested knowledge in the admissions process, including the bar examination.

Admissions Rule Three, § 3-1 clearly states that the in order for a person to receive a recommendation to the Utah Supreme Court, he must among the seven requirements, have a law degree by an ABA approved law school. It does not provide that the law degree is a prerequisite to sitting for the bar examination as handled by either the Bar or the Utah Supreme Court. (App. 103).

The state supreme court applies long-standing rules when construing statutory construction. *Lyon v. Burton*, 5 P.3d 616 (Utah 2000). "[W]here the statutory language is plain and unambiguous, we do not look beyond the language's plain meaning to divine legislative intent." *Id.* (quoting, *Horton v. Royal Order of the Sun*, 821 P.2d 1167, 1168 (Utah 1991). In this matter, neither the court nor its agent, the Bar, follow this policy at issue. Therefore, in an arbitrary fashion, that court has substantially departed from decisions it has maintained throughout the past in Utah jurisprudence. As a result, it can only be concluded that the decision in this case was arbitrary as a result of undue influence by its own involvement in the rule-making process under Article VIII, Section 4 of the State Constitution. Preservation of the judiciary as an expositor of justice was the intent the Framers had for the court. It was not the intent of the courts to establish policy, that rule-making function was intended to remain the function of the legislative body.

In the case at hand, it is clear from reading the Admissions Rule Three, § 3-1, that the Petitioner is entitled to apply for the bar examination. And that the rule does not reasonably inform an applicant that a law degree may be a prerequisite. Such an inter-

pretation does not withstand this Petitioner's Constitutional challenge of extraordinary circumstances. Furthermore, the interpretation fails to justify the denial of Petitioner's Right to redress injuries. In this case, the Petitioner holds himself to be qualified to engage in the lawful practice of law competently. Under the law of the land, he is untitled the right to demonstrate that belief.

During the proceeding in the state supreme court, the bar's "Response to Verified Complaint for Admission to the Bar (sic)" disclosed to Petitioner the only waiver of Section 3-1(3) the court has ever granted. (App. 58). That attorney is Preston Collet Regehr, who is still engaged in the practice of law today. In his case, the state supreme court granted him two hearings. (App. 106-107). One hearing was before the court, the second was deferred to the state bar. In this matter, the court refused even to allow oral arguments in spite of his clear request pursuant to the rules. (App. 46).[14] For all of these reasons, this Court should issue a writ of certiorari to the Utah Supreme Court.

E. Mr. Jensen's Right to Sit for the Bar Examination.

Under the Reservation clause of the both Constitutions, the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. These rights are the Rights to Life, Liberty and the Pursuit of Happiness. They are also known as Natural Rights, bestowed upon by Almighty God to all free men. *Commentaries on*

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14 Rule 4-501, Utah Code of Judicial Administration states, "A decision on a motion shall be rendered without a hearing unless ordered by the court, or requested by the parties . . . . In this matter, the Petitioner filed his request for hearing on the Application for Ex Parte Proceedings pursuant to this rule.

the Laws of England, Sir William Blackstone (1772).[15] Included within these Rights, are as follows: The right of the citizen to be free to the use of his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or vocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion. *Adams v. Tanner*, 244 U.S. 590, 61 L. Ed 1336, 37 S. Ct. 662. The protections of these Rights are particularly found in the guaranties of the Fourteenth Amendment. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 76 L. Ed. 747, 52 S. Ct. 371. These Rights are fundamental, natural, inherent, and inalienable, and are the most sacred and most valuable Rights of a citizen. A person's business, occupation, or calling is "property" within the meaning of the constitutional provisions as to Due Process of Law and is included in the Rights to liberty and to the pursuit of happiness. *Constitutional Law*, 11 Am. Jur. § 336.

In this matter, these reserved Rights, Privileges and Immunities of the Petitioner were repeated asserted by him only to be abrogated by the bar and state supreme court. With the presentation of Petitioner's extraordinary circumstances, the general Rule regarding a possession of a law degree from an ABA-approved law school is an unreasonable restraint against the Petitioner's personal liberty. It would have been appropriate for the court to allow the Petitioner a hearing and for the court to grant the Petitioner a waiver so that he may sit for the State of Utah's bar examination.

Inasmuch, for these abrogations of Rights on a federal question appropriate for this Court, this Court should issue a writ of certiorari to the Utah Supreme Court.

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15 See, absolute rights.

CLOSING AND RESERVATION

Meanwhile, the practice of law is subject to reasonable regulation. But as presented in the case of the Petitioner, extraordinary circumstances exist which justifies a waiver of Rule Three, § 3-1(3)'s application against him for the purpose of allowing the Petitioner to sit for the bar examination. After all, some of the greatest legal minds, including John Marshall, Abraham Lincoln and nearly half of the Honorable Justices of this Court did not have law degrees. Certainly these minds were not viewed as being any less competent for naught.[16] *What would have happened to this Country had they been imposed the same restriction that the Petitioner is confronted with?*

The Petitioner reserves his Common Law claim, his contract claim, and any rebuttal claims for further briefing before this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jason K Jensen
Petitioner Pro Se

Address:
Jason K Jensen
180 South 300 West, Suite 210
Salt Lake City, Utah 84101
(801) 328-8888

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16 See Table of Supreme Court Justices. (App. 112-130).

IN THE SUPREME COURT OF THE STATE OF UTAH

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In re:

JASON K JENSEN,
Petitioner.

Case no. 200100393-SC

ORDER

The court has considered Mr. Jensen's "motion to alter or amend judgment de novo en banc," and now rules as follows:

1. This court previously denied Mr. Jensen's request for a waiver of rule 3-1(3) of the rules governing admission to the Bar which requires graduation from an ABA-approved law school and to allow him to take the Bar examination without that prerequisite. This court again denies Mr. Jensen's request for waiver on the previously stated ground that the standards adopted by this court apply equally to all applicants and no exceptions will be made.

2. This court is not an evidence-taking tribunal and therefore must decline Mr. Jensen's request for a trial on the merits with a full panoply of witnesses and exhibits and the attendant constitutional rights of confronting and compelling witnesses in his defense.

3. Under article VIII, section 2, of the Utah constitution, this court by rule may sit and render a final judgment either en banc or in divisions, and the order to which Mr. Jensen objects was properly signed by the law

& motion chair for the month of June 2001.

FOR THE COURT:

7-16-01
Date

s/ Richard Hall
Chief Justice Richard C. Howe Chair of July L&M Panel

s/ Leonard H. Russon
Associate Chief Justice Leonard H. Russon

s/ Matthew B. Durrant
Justice Matthew B. Durrant

IN THE SUPREME COURT OF THE STATE OF UTAH

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In re:

JASON K JENSEN,
Petitioner.

Case no. 200100393-SC

ORDER

The court has considered Mr. Jensen's verified petition, application for ex parte proceeding, and request for hearing. The standards adopted by this court by virtue of its authority to govern the practice of law as set out in article VIII, section 4, of the Utah constitution, apply equally to all applicants, and no exceptional circumstances have been presented why the court should be compelled to deviate from those standards.

The petition is therefore denied.

BY THE COURT

June 18, 2001
Date

s/ Christine M. Durham
Christine M. Durham
Justice

Utah State Bar
645 South 200 East • Suite 200
Salt Lake City, Utah 84111-3834
Telephone: 801-531-9077 • (WATS) 1-800-698-9077
FAX: 801-531-0660

November 7, 1996

Mr. Jason K. Jensen
387 "G" Street
Salt Lake City, Utah 84102

Dear Mr. Jensen:

Enclosed please find your application fee of $400.00. You do not qualify to take the Utah State Bar examination. Pursuant to Rules Governing Admission to the Utah State Bar, Rule Three, Section 3-1, which reads as follows:

> To be recommended as a student applicant for admission to te Bar, a person must have graduated with an LL.B, J.D, or equivalent degree from an approved law school (Rule One-Definitions: Approved Law School. An "approved law school: is one which is fully or provisionally approved by the American Bar Association pursuant to its Standards and Rules of Procedure for Approval of Law Schools.)

If you have any questions please feel free to contact me.

Sincerely,

s/Darla C. Murphy
Darla C. Murphy
Admissions Administrator

Enclosure

STATE CONSTITUTIONAL PROVISIONS STATUTES, AND RULES

The Due Process clause, Article I, Section 7 of the Utah Constitution provides:

> No person shall be deprived of life, liberty or property, without due process of law.

The Open Courts clause, Article I, Section 11 of the Utah Constitution provides:

> All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

The Distribution of Powers clause, Article V, Section 1 of the Utah Constitution provides in section 1:

> The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

The Supreme Court Jurisdiction clause, Article VIII, Section 3 provides:

> The Supreme Court shall have original jurisdiction to issue all extraordinary writs and to answer questions of state law certified by a court of the United States. The Supreme Court shall have appellate jurisdiction over all other matters to be exercised as provided by statute, and power to issue all writs and orders necessary for the exercise of the Supreme Court's jurisdiction or the complete determination of any cause.

The Supreme Court Rule-Making clause, Article VIII, Section 4 of the Utah Constitution provides:

> The Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state and shall by rule manage the appellate process. The Legislature may amend the Rules of Procedure and Evidence adopted by the Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature. Except as otherwise provided by this constitution, the Supreme Court by rule may authorize retired justices and judges and judges pro tempore to perform any judicial duties. Judges pro tempore shall be citizens of the United States, Utah residents, and admitted to practice law in Utah. The Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.

The District Court Jurisdiction clause, Article VIII, Section 5 provides:

> The district court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs. The district court shall have appellate jurisdiction as provided by statute. The jurisdiction of all other courts, both original and appellate, shall be provided by statute. Except for matters filed originally with the Supreme Court, there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause.

The Adoption of Common Law Statute, Utah Code Ann. § 68-3-1 (1953, as amended) provides:

> The principles of English common law are adopted insofar as they are not repugnant or in conflict with the laws of this state.

The Supreme Court Jurisdiction Statute, Utah Code Ann. § 78-2-2 (1953, as amended) provides:

> (1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.
> (2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) a judgment of the Court of Appeals;
(b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;
(c) discipline of lawyers;
(d) final orders of the Judicial Conduct Commission; (e) final orders and decrees in formal adjudicative proceedings originating with:
(i) the Public Service Commission;
(ii) the State Tax Commission;
(iii) the School and Institutional Trust Lands Board of Trustees;
(iv) the Board of Oil, Gas, and Mining;
(v) the state engineer; or
(vi) the executive director of the Department of Natural Resources reviewing actions of the Division of Forestry, Fire and State Lands;
(f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (3)(e);
(g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;
(h) interlocutory appeals from any court of

record involving a charge of a first degree or capital felony;

(i) appeals from the district court involving a conviction or charge of a first degree felony or capital felony;

(j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction; and

(k) appeals from the district court of orders, judgments, or decrees ruling on legislative subpoenas.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:

(a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;

(b) election and voting contests;

(c) reapportionment of election districts;

(d) retention or removal of public officers;

(e) matters involving legislative subpoenas; and

(f) those matters described in Subsections (3)(a) through (d).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

Chapter 16. Utah State Bar Rules for Integration and Management
Rules Annotations

I. Regulation of the practice of law in Utah.

A. *Vesting of authority.* Under the power vested to it by the Constitution of the State of Utah and subject to the direction and control provided herein, the Utah Supreme Court hereby authorizes and designates the Utah State Bar to administer rules and regulations prescribed hereunder which govern the practice of law in Utah. All persons authorized to practice law in Utah shall be licensed by the Utah State Bar in accordance with the rules of the Court.

The Utah Supreme Court recognizes a compelling state interest in its use of the Utah State Bar to assist the Court in governing admission to the practice of law, the conduct and discipline of persons admitted to practice law, and to improve the quality of legal services in the state. The Court also finds that the requirements imposed, the delegations made and the authority granted to the Utah State Bar provide the best ways to promote these compelling state interests, and that there are no less restrictive alternatives available to achieve those results.

The purposes, duties and responsibilities of the Utah State Bar include, but are not limited to, the following:

(1) To advance the administration of justice according to law;

(2) To aid the courts in carrying on the administration of justice;

(3) To regulate the admission of persons seeking to practice law;

(4) To regulate and to discipline persons practicing law;

(5) To foster and to maintain integrity, competence and public service among those practicing law;

(6) To represent the Bar before legislative, administrative and judicial bodies;

(7) To prevent the unauthorized practice of law;

(8) To promote professionalism, competence and excellence in those practicing law through continuing legal education and by other means;

(9) To provide service to the public, to the judicial system and to members of the Bar;

(10) To educate the public about the rule of law and their responsibilities under the law; and

(11) To assist members of the Bar in improving the quality and efficiency of their practice.

B. *Qualifications*. The qualifications of lawyers and Foreign Legal Consultants for admission to practice law in Utah, the duties, obligations and the grounds for discipline of members, and the method of establishing such grounds, subject to the right of this Court to discipline a member admitted to the Bar, shall be prescribed in these Rules, the Rules of Admission approved by the Court on June 15, 1990 and as thereafter amended and the Rules of Lawyer Discipline and Disability as approved by the Court on July 1, 1993 and as thereafter amended.

C. *Licensure required.* No person shall practice law in Utah or hold himself or herself out as one who may practice law in Utah unless he or she has been admitted and is an active member of the Utah State Bar in good standing or is an inactive member in good standing providing pro bono legal services for or on behalf of a legal services organization approved by the Bar upon meeting certification and performance standards, conditions, and rules established by the Board, or has been licensed by the Bar as a foreign legal consultant, and no suspended or disbarred lawyer or foreign legal consultant shall practice law in Utah or hold himself or herself out as one who may practice law in Utah while suspended or disbarred.

II. Definitions.

Unless the context otherwise requires, the following definitions shall apply to the interpretation of these Rules relating to admission and discipline of lawyers:

A. "Board" means Board of Commissioners of the Utah State Bar.

B. "Discipline" means disbarment, suspension, probation, reprimand or admonition.

C. "Member" means a lawyer who has been admitted to the Utah State Bar, and who holds a current license, the classifications of which are to be set forth hereinafter.

D. "Bar" means the Utah State Bar.

E. "Court" means the Utah Supreme Court.

III. Rules of organization and management of the bar.

A. *Qualification for admission.* All persons who have been heretofore, and all persons who shall hereafter be, duly admitted to practice as an attorney at law in Utah, and who are not the subject of an order of the Court prior to July 1, 1993 or a district court thereafter which terminates, suspends or restricts the right to practice law in Utah, are qualified to be members of the Bar, subject to the provisions of these Rules.

B. *Board of Commissioners; Number; Term and vacancies; Powers and duties.* There shall be a Board of Commissioners of the Bar consisting of 13 voting members, 11 elected lawyers and two non-lawyers appointed by the Court. The initial term of office of one of the non-lawyer commissioners shall be for two years. Except as otherwise provided, the term of office of each commissioner shall be three years and until a successor is elected and qualified. In the event of a lawyer vacancy on the Board occurring prior to the expiration of the completed term of office, the remaining commissioners shall either (1) conduct a special election; (2) appoint a successor from among the active members of the Bar whose business mailing addresses on the records of the Bar are in the division from which the commissioner was elected, who shall serve until the following annual election; or (3) fill the vacancy through the next regular annual election. In the event a lawyer vacancy on the Board occurring prior to the expiration of the completed term of office is filled by either a special regular election, the Board may establish the term of the successor to be either a one, two or full three-year term, provided that

there would be not more than three but not fewer than two commissioners from the Third Division whose terms expire in any one year and not more than five but not fewer than four commissioners on the Board whose terms expire in any one year.

The Board is granted and may exercise all powers necessary and proper to carry out the duties and responsibilities of the Bar and the purposes of these Rules and shall have all authority which is not specifically reserved to the Court. The Court specifically reserves the authority to: (1) approve Bar admission and licensure fees; (2) approve all rules and regulations formulated by the Board for admissions, professional conduct, client security fund, fee arbitration, procedures of discipline and disability, legislative activities, unauthorized practice of law, and Bar examination review and appeals; and (3) establish appropriate rules and regulations governing mandatory continuing legal education.

C. *Territorial divisions*. For the purposes of these Rules, the First Judicial District shall be known as the First Division; the Second Judicial District shall be known as the Second Division; the Third Judicial District shall be known as the Third Division; the Fourth Judicial District shall be known as the Fourth Division; and the Fifth, Sixth, Seventh and Eighth Judicial Districts shall be know as the Fifth Division.

D. *Number of lawyer commissioners from each division*. There shall be one lawyer member of the Board from each of the divisions, except the Third Division from which there shall be seven lawyer commissioners. No

more than one lawyer commissioner from any division, except from the Third Division and no more than seven lawyer commissioners from the Third Division, shall serve on the Board at the same time.

E. *Nomination and eligibility of lawyer commissioners*. Lawyers whose business mailing addresses on the records of the Bar are in a particular division shall alone have the right to nominate persons for the office of commissioner from that division. To be eligible for the office of commissioner in a division, the nominee's business mailing address must be in that division as shown by the records of the Bar. Nomination to the office of commissioner shall be by written petition of ten or more members of the Bar in good standing. Any number of candidates may be nominated on a single petition. Nominating petitions shall be mailed to the Executive Director of the Bar within a period to be fixed by the rules made by the Board.

F. *Election of commissioners*. The lawyers on the Board shall be elected by the vote of the resident active members of the Bar as follows: In the year 1983 and every third year thereafter, one member from the Second Division and two members from the Third Division, except that in the year 1983 only, there shall be four members elected from the Third Division; in the year 1984 and every third year thereafter, one member from the First Division and three members from the Third Division; in the year 1985 and every third year thereafter, two members from the Third Division and one each from the Fourth and Fifth Divisions. The candidate from any division, and the three or two candidates from the Third Division, receiving

the greatest number of votes of that division shall be the commissioner from such division. For the year 1983, the candidate from the Third Division receiving the fourth greatest number of votes shall be the commissioner for a two-year term. A member is limited to voting for candidates for commissioner from the division in which his or her business mailing address is located as shown by the records of the Bar. The ballots shall be deposited in person with or by mail to the Executive Director of the Bar. There shall be an annual election by the resident active members of the Bar for the purpose of filling vacancies. The Board shall fix the time for holding the annual election and prescribe rules and regulations in regard thereto, not in conflict with the provisions of these Rules. The Board shall, in accordance with its rules, give notice of the annual election by mail at least 90 days prior to the date on which ballots will be counted.

Those persons holding office as commissioners at the time of the adoption of these Rules or who were elected under the existing statute will continue in office for the period of time elected to serve.

G. *Nomination and election of President-elect.* The Board shall nominate two lawyers in good standing on active status to run for the office of President-elect to be elected by the vote of the active members of the Bar.

The President and the President-elect shall hold office until their successors are elected and seated. A secretary and such other assistants as the Board may require, may be selected from within or without the Board to hold office at the pleasure of the Board and to be paid

such compensation as the Board shall determine.

H. *Officers and organization of Board.* The Board shall be organized and authorized to conduct business by the seating of elected commissioners, and a President and President-elect of the Bar. The President-elect for the previous year shall automatically succeed to the office of President. A President who is not an elected commissioner, or a President-elect who is not an elected commissioner and who is conducting a meeting in the absence of the President, has the authority to vote on matters brought before the Board only if necessary to break a tie vote.

I. *Meeting, annual and special - Notice.* There shall be an annual meeting of the Bar, presided over by the President of the Bar, open to all members in good standing, and held at such time and place as the Board may designate, for the discussion of the affairs of the Bar and the administration of justice. Special meetings of the Bar may be held at such times and places as the Board may designate. Notice of all meetings shall be given by mail to all members of the Bar not less than fifteen days prior to the date of such meeting.

J. *By-laws.* The Board shall have power to adopt by-laws, not in conflict with any of the terms of these Rules, concerning the selection and tenure of its officers, the creation of sections and committees and their powers and duties, and generally for the control and regulation of the business of the Board and of the Bar.

K. *Admission to practice law, qualifications, enrollment, oath, and fees.*

(1) The Board by delegation from the Court shall have the power to determine the qualifications and requirements for admission to the practice of law, and to conduct examinations of applicants; and it shall from time to time certify to the Court those applicants found to be qualified. Qualifications and requirements for admission to the practice of law shall be as set forth in the Rules for Admission to the Utah State Bar approved by the Court on June 15, 1990 and as amended thereafter. The approval by the Court of any person certified for licensure to practice law in accordance with such Rules shall entitle him or her to be enrolled in the Bar upon his or her taking an oath to support the Constitution of the United States and of Utah and to discharge faithfully the duties of an attorney at law or foreign legal consultant to the best of his or her knowledge and ability, and payment of the fee fixed by the Board with the approval of the Court. [illegible] thereafter, to practice law upon payment of annual or special license fees herein provided, subject to the provisions of these Rules.

(2) Upon receiving certification by the Board and approval from the Court, the applicant shall pay $50.00 to the Clerk of the Court for a Certificate of Admission, $30.00 of which shall be retained by the state treasurer as a special fund for the benefit of the Utah State Law Library, to be expended by the Judicial Council.

L. Roll of licensed lawyers. The Clerk of the Court shall keep a roll of the attorneys at law admitted to practice in Utah, which must be signed by each person admitted

before he or she is enrolled and receives his or her Certificate of Admission to the Bar or license as a foreign legal consultant.

M. *Conduct of licensed lawyers, conduct of judicial officers, complaints, investigations, and discipline*. The Board shall formulate rules governing the conduct of all persons admitted to practice in Utah, including foreign legal consultants, and shall investigate unethical, questionable or improper conduct of persons admitted to the practice of the law, including members of the Bar holding judicial office. The Board shall also formulate rules governing procedures in cases involving alleged misconduct of members of the Bar, including those holding judicial office.

N. *Rules and regulations, court to approve*. All rules and regulations formulated by the Board shall be submitted to and approved by the Court.

O. *Authority to engage in legislative activities*. Pursuant to Article VIII, Section 4 of the Utah Constitution, the Court hereby authorizes and directs the Board to engage in legislative activities.

(1) The Board is authorized and directed to study and provide assistance on public policy issues and to adopt positions on behalf of the Board on public policy issues. The Board is authorized to review and analyze pending legislation, to provide technical assistance to the Legislature, the Governor, the Judicial Council and other public bodies upon request, and to adopt a position in support of or in opposition to a policy initiative, to adopt

no position on a policy initiative, or to remain silent on a policy initiative. The position of the Board shall not be construed as the position of the Court or binding on the Court in any way.

(2) The Board's consideration of public policy issues shall be limited to those issues concerning the courts of this state, procedure and evidence in the courts, the administration of justice, the practice of law, and matters of substantive law on which the collective expertise of lawyers has special relevance and/r which may affect an individual's ability to access legal services or the legal system.

(3) Public policy issues may be submitted to the Board for consideration in accordance with written procedures established by the Board.

(4) The adoption of a Board position shall be in accordance with written procedures established by the Board.

(5) The Board shall prepare and maintain a written record of the Board's positions on public policy issues and shall ensure reasonable notice and distribution to the members of the Bar.

(6) The Board may establish a Legislative Affairs Committee to assist in carrying out its responsibilities as set forth above. The committee's membership and procedures shall encourage broad participation and input and compliance with this policy.

(7) The Board shall establish, as part of its annual budget, a legislative budget which shall include all reasonable administrative expenses attributable to the Bar's legislative activities. The Board shall identify each member's pro rata portion of the amount budgeted for legislative activities and establish a fair and equitable rebate procedure of that amount for Bar members who object to any legislative position taken by the Board.

P. *Annual license, fees, disbursements of funds.* Every person practicing, or holding himself or herself out as practicing law or as an attorney at law in Utah including foreign legal consultants, shall prior to so doing and prior to the first day of July of each year, pay to the Bar a license fee in an amount to be fixed by the Board with the approval of the Court to effectuate the purposes of these Rules. These funds shall be administered by the Bar.

Q. *Issuance of license, form.* The Executive Director of the Bar shall issue to each person paying said license fee, if such person shall have theretofore been admitted to practice law in this state or licensed as a foreign legal consultant by the Court and not disbarred or then under suspension, a license in such form as the Board may prescribe, for the licensure year for which fees were paid, and shall deliver such license to the person entitled thereto.

R. *Powers of the board respecting funds.* For the purpose of carrying out the objects of these Rules, and in the exercise of the powers herein granted, the Board shall have power to make orders concerning the disbursement of said funds.

S. *Active and inactive members of the bar*. Any member of the Bar, who has retired from the practice of law, or who is not engaged in the practice of law, except for foreign legal consultants, may upon request be enrolled as an inactive member. There shall be no rebate of any license fee upon transfer from active to inactive membership. An inactive member may attend the annual and special meetings, and participate in any debates or discussions at such meetings, but shall not be entitled to vote in any election or upon any question. An inactive member may be appointed by the Board to special committees, other than committees for examination or qualification for admission to practice and disciplinary committees. The annual fee for an inactive member shall be payable before the first day of July of each year, in an amount fixed by the Board, with the approval of the Court to effectuate the purpose of the Rules. An inactive member, if in good standing, may be enrolled as an active member. Upon such request and the payment of the full annual license fee for the current fiscal year and any other fees authorized by the Court, less any fee paid as an inactive member for such fiscal year, the applicant shall be immediately transferred from the inactive roll to the active roll. An inactive member may provide pro bono legal services for or on behalf of a legal services organization approved by the Bar, upon meeting certification and performance standards, conditions and rules established by the Board.

T. *Practicing without a license prohibited*; Action or proceedings to enforce; Exception. No person who is not duly admitted and licensed to practice law in Utah as an attorney at law or as a foreign legal consultant nor any

person whose right or license to so practice has terminated either by disbarment, suspension, failure to pay his or her license and other fees or otherwise, shall practice or assume to act or hold himself or herself out to the public as a person qualified to practice law or to carry on the calling of an attorney at law in Utah. Such practice, or assumption to act or holding out, by any such unlicensed or disbarred or suspended person shall not constitute a crime, but this prohibition against the practice of law by any such person shall be enforced by such civil action or proceedings, including writ, contempt or injunctive proceedings, as may be necessary and appropriate, which action or which proceedings shall be instituted by the Bar.

Nothing in this section shall prohibit a person who is unlicensed as an attorney at law or a foreign legal consultant from personally representing that person's own interests in a cause to which the person is a party in his or her own right and not as assignee.

U. *Duties of attorneys and counselors at law.* It is the duty of an attorney and counselor at law: to comply with the Rules of Professional Conduct of the Utah State Bar and all other duly approved rules and regulations prescribed by the Board or by the Court and to pay all required fees.

V. *Creation of legal assistant division.*

(1) Legal assistant defined. A legal assistant is a person, qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or the entity in the capacity

of function which involves the performance, under the ultimate direction and supervision of an attorney of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that absent such assistance, the attorney would perform. A legal assistant or "paralegal" includes a paralegal on a contract or free-lance basis who work under the supervision of a lawyer or who produces work directly for a lawyer for which a lawyer is accountable.

(2) *Membership and structure of legal assistant division.* Qualified individuals can become "Legal Assistant Affiliates" of the Bar upon submitting an application to the Legal Assistant Division of the Bar. This would require the following:

(a) An initial and annual certification of continuous sponsorship of a Legal Assistant Affiliate by an employer who is a member of the Utah State Bar;

(b) A certification by the attorney and Legal Assistant Affiliate that the legal assistant undertakes no legal work outside the attorney's supervision or supervision of attorney members of the firm. Joint sponsorship by joint employers would be permitted;

(c) An assumption of responsibility by the attorney for the compliance of the legal assistant with all applicable rules of the Utah State Bar;

(d) The Legal Assistant Affiliate's parallel commitment that the attorney and Legal Assistant Affiliate will notify the Bar of any change of employment of the

Legal Assistant Affiliate. The Legal Assistant Affiliates' authority to function as a Legal Assistant Affiliate will terminate concurrent with employment by the sponsor unless sponsorship is accepted by another employer-member of the Bar; and

(e) An appropriate fee.

(3) *Officers of Legal Assistant Division and ex officio membership on the Board.* The Legal Assistant Division may appoint officers (president, vice- president, treasurer, secretary) on an annual basis. The division may also appoint an ex officio, non-voting member of the Board who shall report regularly to the division's membership regarding the overall activities of the Bar.

(a) Legal Assistant Affiliates are eligible to receive the Utah Bar Journal, notices of Bar functions and bar-member rates at seminars and meetings. Legal Assistant Affiliates are not eligible for office within the Bar.

(b) Legal Assistant Affiliates shall not be directly subject to discipline by the Bar. However, supervising or responsible attorneys are responsible for all work undertaken by Legal Assistant Affiliates for or on their behalf.

W. *Conflicts with statutes.* Any existing statutory provisions enacted which conflict with these Rules are hereby ordered ineffective due to the constitutional grant of authority to the Court.

Jason K Jensen
Petitioner Pro Se
180 South 300 West, Suite 210
Salt Lake City, Utah 84101-1490
Telephone: (801) 328-8888
Fax: (801) 595-0300

FILED
UTAH SUPREME COURT
MAY 2 - 2001
PAT BARTHOLOMEW
CLERK OF THE COURT

IN THE UTAH SUPREME COURT

----- ooo0ooo -----

In re:	)	
	)	**VERIFIED PETITION**
	)	
JASON K JENSEN	)	
	)	Case No. 20010393-SC
	)	

Comes now the Petitioner, Jason K Jensen, pro se, and hereby petitions as follows:

JURISDICTION & VENUE

1. The Petitioner is an actual and bona fide resident of Salt Lake County, State of Utah.

2. The acts complained of took place in Salt Lake County, State of Utah.

3. This is an action brought to seek a waiver of the Rules Governing Admission to the Bar Rule 3-1. Said rule requires a student applicant to have graduated with an LL.B, J.D., or equivalent degree from an approved law school.

4. This Court has jurisdiction in this matter pursuant to *Utah Code Ann.* § 78-2-2 (1953, as amended) and Article VIII, § 4 of the Utah State Constitution.

5. This Court is the Court of proper jurisdiction and venue is proper before this Court.

STATEMENT OF FACTS

6. Paragraphs 1 through 5 are incorporated herein by this reference.

7. On or about April 30, 2001, the Petitioner obtained an Application for the Utah Bar Examination and Admission to the Utah State Bar (the "Application") and a copy of the Rules Governing Admission to the Utah State Bar (the "Rules").

8. In Rule 3-1 of the Rules, the qualifications for admission of student applicants is provided.

9. In review of the student qualifications, the Petitioner would be allowed to participate in either or both of the July 2001 or the February 2002 exams if not for Rule 3-1 paragraph 3.

10. Rule 3-1 paragraph 3 provides that a student must "[h]ave graduated with an LL.B, or J.D., or equivalent degree from an approved law school."

11. This Court regulates the Bar and its members by and through its agent the Utah State Bar.

12. This regulation is provided in support of the mission to serve the public and the legal profession by promoting justice, professional excellence, civility, ethics, respect for and understanding of, the law, generally.

13. This regulation is not provided for the purpose of maintaining an elitest profession where all persons in the community could not engage in the practice

of law if found to be qualified and licensed by this Court.

14. This regulation in application does not guarantee that a person possessing an LL.B, J.D., or equivalent degree will engage or practice in a manner consistent with the mission of this Court; many licensed attorneys are disciplined for misconduct. (See Addendum A, which is incorporated herein by this reference). [Omitted from this Petition for Certiorari due to its extraordinary length.]

15. Meanwhile, an LL.B, J.D., or equivalent degree is merely a demonstration of an academic achievement and does not guarantee that the applicant is any more prepared to practice law in the State of Utah than a person having acquired his education through experience and training under the [tutelage] of a Utah licensed practicing attorney.

16. In this matter, the Petitioner has acquired the needed education and experience that should entitle him to engage in the practice of law. However, the Petitioner is required by this Court to obtain a license to practice law.

17. From on or about 1991 to 1994, the Petitioner was enrolled and attended the Salt Lake Community College (the "S.L.C.C.") for a period of three years studying all areas of law as a student in the school's paralegal program. The Petitioner maintained a 3.8 grade point average leading into employment at D. Bruce Oliver, P.C.

18. While at the S.L.C.C., the Petitioner studied many topics, including but not limited to: (1) criminal law; (2) constitutional law; (3) tort law; (4) legal writing; (5) business law; (6) rules of evidence; and other topics commonly used in the practice of law.

19. The Petitioner could not afford to continue his formal [undergraduate study] and any subsequent law school.

20. On or about May 18, 1994, the Petitioner obtained employment with D. Bruce Oliver P.C. where he has acquired the titles of a litigation paralegal and office manager.

21. His on-the-job-training (the "OJT") includes all areas of law, but not limited to, criminal, domestic relations, probate, landlord-tenant, and personal injury, both State and Federal issues, where the Petitioner possesses an interest in engaging in the practice of law in these areas. However, this background knowledge has provided the impetus and foundation to engage in the general practice of law as an advocate.

22. The OJT includes all areas of the State and Federal Rules of Practice, including but not limited to, the Rules of Civil Procedure, Rules of Criminal Procedure, Rules of Evidence, and Rules of Juvenile Procedure, Code of Judicial Administration, and Code of Professional Conduct.

23. The OJT includes continual updates in the law with periodicals, advanced reports, journals, magazines, on-line access, and other resources.

24. While under the supervision of an attorney, the Petitioner conducts client and witness consultations, legal research and pleading preparation, and at times when required, hearings as an advocate in administrative hearings before both the Department of Public Safety and the Office of Recovery Services according to the administrative rules for those governing bodies.

25. Notwithstanding the OJT, the Petitioner has regularly enrolled and attended various Continuing Legal

Education courses and classes (the "CLE") over the past several years, voluntarily.

26. The CLE's that the Petitioner has enrolled and attended include, but may not be limited to: (1) Criminal Case Analysis and Investigation in Utah; (2) Medical Malpractice in Utah; (3) Successful Judgment Collections in Utah; (4) Limited Liability Companies; (5) Basic Creditor-Debtor Practice in Utah; (6) Federal Civil Litigation; (7) Uninsured and Underinsured Motorist Law in Utah; (8) Document Production and Organization in Utah: Management Strategies for the Litigation Paralegal; (9) Analyzing Medical Records for the Utah Paralegal.

27. In light of his experience and training, the Petitioner believes that he is qualified to engage in and practice of law, he believes that he should be permitted to hold himself out as an attorney at law.

28. Based upon information and belief, the Petitioner states that he has been unable to identify any rules promulgated that inform a person where to obtain a waiver of this kind, nor is he familiar with any rule prohibiting him from seeking a waiver of this kind so that he may move forward in the application process.

FIRST CAUSE OF ACTION

Discretionary Powers of the Court.
Article VIII, § 4, Utah State Constitution

29. Paragraphs 1 through 28 are incorporated herein by this reference.

30. Pursuant to Article VIII, Section 4 of the Utah State Constitution, this Court has the exclusive authority to govern the practice of law, including the

admission to practice law and the conduct and discipline of persons admitted to practice law.

31. The Petitioner requests this Honorable Court to grant the Petitioner a waiver of the Rule 3-1 requirement as it pertains to the LL.B, J.D., or equivalent degree from an approved law school.

32. The requirements that the American Bar Association (the "ABA") imposes upon schools producing the LL.B, J.D., or equivalent degrees is inapplicable to the Petitioner due to his extenuating circumstance.

33. The Petitioner challenges the general procedures of the Bar. Therefore pursuant to *Barnard v. Sutliff*, 846 P.2d 1229 (Utah 1992), the Petitioner seeks of this Court its rule-making power over the practice of law and the procedures of the Bar to grant him a waiver of Rule 3-1 as alleged herein above.

34. It would be just and proper for this Court to grant him a waiver of the law school degree requirement.

WHEREFORE, Petitioner prays for judgment under the First Cause of Action as follows:

1. For declaratory judgment granting the Petitioner a waiver of the Rules Governing Admission to the Bar Rule 3-1 requirement of an applicant to have graduated with an LL.B, J.D., or equivalent degree from an approved law school;

2. In the alternative, for the promulgation of a general Rule providing a person with the process to obtain a waiver.

3. For such other relief as may be deemed fair and equitable in the premises.

Dated this 1st day of May, 2001.

s/Jason K Jensen
JASON K JENSEN
Petitioner Pro Se

Petitioner's Address is:
240 Crestone Avenue
Salt Lake City, Utah 84115

VERIFICATION

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On this day personally appeared before me **Jason K Jensen,** to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged the execution of the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and seal this 1st day of May, 2001.

s/D. Bruce Oliver
Notary Public in and for the
State of Utah, residing at: SLC
My Commission expires: 7/25/04

[SEAL]

Jason K Jensen
Petitioner Pro Se
180 South 300 West, Suite 210
Salt Lake City, Utah 84101-1490
Telephone: (801) 328-8888
Fax: (801) 595-0300

FILED
UTAH SUPREME COURT
MAY 2 - 2001
PAT BARTHOLOMEW
CLERK OF THE COURT

IN THE UTAH SUPREME COURT

----- oooOooo -----

In re:	) CERTIFICATE OF
	) SERVICE
	)
JASON K JENSEN	)
	) Case No. 20010393-SC
	)

Comes now the Petitioner, Jason K Jensen, pro se, and pursuant to the request of the Court, does hereby certify that a copy of the Petitioner's Verified Petition with attachments and this certificate were served upon the Utah State Bar, via U.S. Mail, to: Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111.

Dated this 7th day of May, 2001.

s/Jason K Jensen
JASON K JENSEN
Petitioner Pro Se

Petitioner's Address is:
240 Crestone Avenue
Salt Lake City, Utah 84115

Jason K Jensen
Petitioner Pro Se
180 South 300 West, Suite 210
Salt Lake City, Utah 84101-1490
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Fax: (801) 595-0300

FILED
MAY 07 2001
CLERK SUPREME COURT
UTAH

IN THE UTAH SUPREME COURT

---- ooo0ooo ----

In re:	)
	) **APPLICATION FOR**
	) ***EX PARTE* PROCEEDING**
	)
JASON K JENSEN	)
	) Case No. 20010393-SC
	)

Comes now the Petitioner, Jason K Jensen, pro se, and hereby moves this Honorable Court for an Ex Parte Proceeding regarding the Petitioner's cause of action. This motion is filed pursuant to Article I, Sections 1, 7, 11, 14, and 24 and Article VIII, Sections 4 and 5, of the *Utah Constitution* and the Fifth and Fourteenth Amendments to the *U.S. Constitution*.

GOOD CAUSE STATEMENT: (1) The Bar lacks standing to challenge the Petitioner for it has not been delegated the interest by this Court, and (2) this Court and the Bar are in a principal-agent relationship whereby adversity by the Bar would appear prejudicial. See accompanying memorandum, which supports this motion. Said memorandum is hereby incorporated herein and annexed hereto by this reference.

In this matter, the Petitioner is likely to prevail on the merits of this case and said motion is in no way adverse to the public interest.

Dated this 7th day of May, 2001.

s/Jason K Jensen
JASON K JENSEN
Petitioner Pro Se

Petitioner's Address is:
240 Crestone Avenue
Salt Lake City, Utah 84115

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180 South 300 West, Suite 210
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FILED
MAY 07 2001
CLERK SUPREME COURT
UTAH

IN THE UTAH SUPREME COURT

---- oooOooo ----

In re:	)
	) **MEMORANDUM SUPPORTING**
	) ***EX PARTE* PROCEEDING**
	)
JASON K JENSEN	)
	) Case No. 20010393-SC
	)

Comes now the Petitioner, Jason K Jensen, pro se, and pursuant to Rule 4-501, *Utah Code of Judicial Administration*, hereby submits this memorandum in support of his Application for an Ex Parte Proceeding.

ARGUMENT
THE PETITIONER IS ENTITLED TO AN EX PARTE PROCEEDING.

A. The Bar Lacks Standing to Challenge the Waiver Request.

Under the Constitutional scheme in Utah, this Court acts as both the Legislative and Judicial body regarding the practice of law, including the admissions to

the Bar. The Court has the authority to create and interpret these rules governing the practice of law. The scheme in Utah has also created an integrated bar wherein the Bar acts as the executive body enforcing the laws promulgated by this Court. The Constitutional provision that has created this power is Article VIII, § 4.

In this matter, the Petitioner is requesting this Court to exercise its exclusive authority to grant Petitioner a waiver of Rule 3-1 of the Rules Governing Admission to the Utah State Bar. Only the Supreme Court has the authority to grant this request as it is a power specifically reserved to the Court. *See, Arnold v. Utah State Bar Ass'n*, 951 P.2d 745 (Utah 1997). This Court has not delegated any authority to the Bar to grant any waiver regarding any rule for the admission to the bar. *Id*; *see also*, *Barnard v. Sutliff*, 846 P.2d 1229 (Utah 1992).

In light of the integrated scheme, the Bar lacks standing to challenge this proceeding initiated by the Petitioner–the decision is exclusively this Court's to decide. If the Court agreed with the Petitioner and granted him a waiver of Rule 3-1, the Board of Commissioners would have to abide by it. Likewise, if the Court ordered the Board of Commissioners to conduct an investigation or hold a committee regarding the Petitioner's waiver, the Board of Commissioners would have to abide by it as well.

B. The Bar is Ethically Precluded from Challenging the Petitioner.

Notwithstanding the lack of standing, the Petitioner

further believes that the Board of Commissioners is precluded by its own Rules of Professional Conduct from advocating against the Petitioner in this proceeding. In light of the Bar's quasi-governmental position and it's principal-agent relationship with this Court, it would appear to have an unfair and prejudicial advantage over the Petitioner in this tribunal. Certainly one could say the Bar did have an unfair advantage over a party if the Court adopted the Bar's every position carte blanche in every case.

Meanwhile, it is the Petitioner in this matter who enjoys certain inherent and inalienable rights. These rights include but are not limited to: (1) the right to due process protection–to a fair and just proceeding;[1] (2) the right to petition for redress of his grievances;[2] and (3) the right to an open forum to be administered without denial or unnecessary delay;[3] and (4) the right of appeal except in matter filed originally in this Court.[4] In the exercise of these rights this Court should grant him his application for an Ex Parte Proceeding. The Petitioner urges this Court to consider the conduct proscribed by Rules 1.12, 3.3, 3.5,

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[1] The Utah State Constitution, Art. I, § 7.

[2] *Id.*, Art. I, § 1.

[3] *Id.*, Art. I, § 11.

[4] *Id.*, Art. VIII, § 5. As arguendo, the granting of an ex parte application can assure greater fairness in this proceeding in lieu of no right of appeal.

8.4 for instance regarding the protections of the Petitioner's rights in this proceeding.

Rule 1.12, Former Judges or Arbitrator.

A member of the Bar cannot represent anyone in connection with a matter in which the party participated personally and substantially as a judge or other adjudicative officer, unless all parties consent after consultation. The Petitioner firmly believes that all the commissioners within this Board of Commissioners act in the adjudicative officer role and all share direct communication with this Court regularly regarding admissions and the rules governing the Bar.

Rule 3.3, Candor Toward the Tribunal.

The Bar is required to disclose legal authority adverse to the Bar if it were to attempt to appear and oppose the Petitioner. As part of this duty, the Bar must honor any adverse legal authority. In appearing and advocating an opposing position,[5] the Bar cannot do so with the intent to disrupt or delay this proceeding, or to do so knowing that it would result in a recusal of this Court. A question of recusing the Court would be raised regarding the principal-agent relationship enjoyed between this Court and the Bar. *See*, *generally*, *In Re Affidavit of Bias*, 947 P.2d 1152 (Utah 1997); *also*, Utah Code Ann. §

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[5] Especially, if the opposition was solely to oppose without any justification in law or fact.

78-7-1 (1953, as amended).[6] However, so long as the Bar is precluded from participating in this proceeding the question is not ripe for consideration.

Rule 3.5, Impartiality and Decorum of the Tribunal.

Certainly through its close association with this Court, the principal-agent relationship would be severely handicapped while this Petition is pending in that the Bar could not communicate any information ex parte to this Court dealing with the Rules for Admissions, waivers or otherwise that would be adverse to the Petitioner's legal rights stated above. The Petitioner is entitled to a just and fair proceeding just as anyone in any other tribunal regarding any other matter. *See, Nelson v. Jacobsen*, 669 P.2d 1207 (Utah 1983). Adverse ex parte communications with the Court regarding the Petitioner's claim, would substantively and procedurally deprive the Petitioner of these fundamental protections afforded to him by the Constitutions.

Rule 8.4, Misconduct.

Members of the Bar may not engage in conduct that is prejudicial to the administration of justice. Unfair litigation caused an active principal-agent relationship of one party with the tribunal would manifest an injustice. In

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[6] This section proscribes that no judge or justice may sit or act in any action or proceeding to which he is a party, or in which he is interested.

the law degree requirement of Rule 3-1. He fully believes and can demonstrate that he has acquired at least the same entry level knowledge as a law school graduate seeking admission with the Bar. This request is not one to allow him to practice law, but he be given the opportunity to take the bar exam. If he demonstrates his competency by passing the bar exam, the feat should speak for itself. To allow the Bar to advocate against the Petitioner, the Petitioner believes that it would be a miscarriage of justice; the Petitioner could be prejudiced by an adversarial Bar before this Court by either delay in the proceedings or by the denial of the relief itself.

Remember, the regulation of attorneys was, in part, intended to protect society from those who were incompetent to represent parties and their legal interests. The rules governing the Bar and the admissions process are general rules. They are not going to apply in every case. By themselves they do not offer society a guarantee of any kind that those who duly licensed to practice law will do so competently. Thus, the rules of professional conduction and the power of the Courts to discipline attorneys for their misconduct. Rule 3-1 is one of these rules that are generally applied and it is the Petitioner's may be waived by the Court on a case-by-case basis. In this case, the Petitioner believes this Court will find that a waiver would be appropriate and likewise would not be adverse to the public interest.

CONCLUSION

Base upon the foregoing, the Petitioner hereby requests that this Honorable Court grant the Petitioner an

ex parte proceeding regarding his Petition for Waiver of Rule 3-1 of the Rules Governing Admission to the Utah State Bar. This Court should find that any Bar opposition in this proceeding would be inappropriate under the circumstances.

Dated this 7th day of May, 2001.

s/Jason K Jensen
JASON K JENSEN
Petitioner Pro Se

Petitioner's Address is:
240 Crestone Avenue
Salt Lake City, Utah 84115

VERIFICATION

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On this day personally appeared before me **Jason K Jensen,** to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged the execution of the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

s/Orson B. West, Jr.
Notary Public in and for the
State of Utah, residing at: SLC
My Commission expires: 8/15/04

[SEAL]

Jason K Jensen
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FILED
MAY 07 2001
CLERK SUPREME COURT
UTAH

IN THE UTAH SUPREME COURT

---- ooo0ooo ----

In re:	)
	) **REQUEST FOR HEARING**
	)
	)
JASON K JENSEN	)
	) Case No. 20010393-SC
	)

Comes now the Petitioner, Jason K Jensen, pro se, and pursuant to Rule 4-501(3) of the Utah Code of Judicial Administration, does hereby request a hearing regarding the Petitioner's Application for Ex Parte Proceeding.

Dated this 7th day of May, 2001.

s/Jason K Jensen
JASON K JENSEN
Petitioner Pro Se

Petitioner's Address is:
240 Crestone Avenue
Salt Lake City, Utah 84115

Utah State Bar
645 South 200 East • Suite 200
Salt Lake City, Utah 84111-3834
Telephone: 801-531-9077 • 1-800-698-9077
FAX: 801-531-0660
www.utahbar.org

UTAH SUPREME COURT
MAY 09 2001
PAT BARTHOLOMEW

ORIGINAL

May 7, 2001

Patricia H. Bartholomew
Clerk of the Court
Utah Supreme Court
Scott M. Matheson Courthouse
450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114

Re: Jason K. Jensen
Verified Petition for Declaratory Judgment
Case No. 20010393

Dear Pat:

Today we received a copy of a Petition filed with the Court from a paralegal who wants to take the bar examination. We have dealt with Mr. Jensen in a number of other situations but I'm not quite sure how to approach this latest attempt. If the Court wishes the Bar to file a written response to his Petition, please let me know at your earliest convenience. Thank you for your help.

Very truly yours,

s/ Katherine
Katherine A. Fox
General Counsel

Katherine A. Fox (5278)
General Counsel
Utah State Bar
645 South 200 East
Salt Lake City, Utah 84111
Telephone: (801) 531-9077
Fax: (801) 531-0660

FILED
JUNE 01 2001
CLERK SUPREME COURT
UTAH

IN THE SUPREME COURT OF THE STATE OF UTAH

In re:	RESPONSE TO VERIFIED PETITION FOR ADMISSION
JASON K. JENSEN	TO THE UTAH STATE BAR
	Case No. 20010393

THE UTAH STATE BAR, by and through its General Counsel, Katherine A. Fox, hereby files this Response to Verified Petitioner for Admission to the Utah State Bar. The Petitioner in this matter seeks a waiver of Rule 3-1(3) of the Rules Governing Admission (the "Rule"). That Rule requires that a student applicant must graduate from an American Bar Association ("ABA") approved law school before being permitted to take the bar examination.[7] The Petitioner's arguments can be

[7] Under Rule 4 of the Rules Governing Admission attorney applicants who have practices law for any of the four of the five years immediately preceding the filing of an application are not required to have graduated from an ABA approved law school if they are in "good standing". The

summarized as follows:

1. Rule 3-1(3) does not guarantee that a person who graduates from an ABA approved law school will practice law ethically;

2. Rule 3-1(3) does not guarantee that a person who graduates from an ABA approved law school will practice law more competently than a person who acquired his or her education "through experience and training under the tutelage of a Utah licensed practicing attorney";

3. Rule 3-1(3) should not function to "maintain an elitist profession where all persons . . . could not engage in the practice of law if found to be qualified and licensed by the Courts"; and

4. The Petitioner has allegedly "acquired the needed education and experience which should entitle him to engage in te practice of law without having attended or graduated from an ABA approved law school."[8]

RULE 3-1(3) SERVES THE PUBLIC'S AND THE LEGAL PROFESSION'S BEST INTERESTS

Rules 3-1(3) of the Rules Governing Admission to the Utah State Bar reads as follows:

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rationale behind Rule 4 is that substantive experience in the actual practice of law is deemed to be an acceptable substitute for a quality law school education.

[8] It is somewhat unclear to the Bar if Petitioner is asking the Court to waive only the requirement that he have graduated from an AA approved law school or is asking the Court to also waive the bar examination requirement.

"To be recommended as a student applicant for admission to the Bar, a person must . . . have graduated with an LL.B., J.D., [sic] or equivalent degree from an [ABA] approved law school". (See copy of Rule 3-1(3) attached as Exhibit "A".) [Omitted from this petition for certiorari]. The Bar believes that ABA accreditation s a rational, objective and effective means to determine if an applicant has had the benefit of a sound legal education which has included training in professional responsibilities and ethical obligations which are inherent in the practice of law. The Bar also believes that law schools which have been uniformly and thoroughly evaluated by experts sing objective criteria provide more consistent exposure to essential legal principles. Since its inception in 1878, the ABA has been interested in improving the quality of legal education. Attached to this Response is a copy of a summary describing the value of the ABA's role in the law school accreditation process. (See Exhibit "B".) [Omitted from this petition for certiorari]. The summary states in part:

The criteria for eligibility to take the bar examination or to otherwise qualify for bar admission are set by each state not by the ABA or the Council of the Section of Legal Education and Admissions to the Bar. In order to sit for the bar examination, most states require an applicant to hold a degree from a law school that meets acceptable established educational standards. *Most states, however, have chosen not to handle the*

> *daunting task of accrediting law schools throughout the United States to determine if individuals have satisfied the requisite educational qualifications. Maintaining an accreditation process is both fiscally and administratively demanding. As a result, the vast majority of bar admission authorities in the United States rely upon ABA approval to determine whether their legal education requirement for admission to the bar is satisfied.* Education at an ABA approved law school meets the requirements in every jurisdiction in the United States.[9]

Id. (Emphasis added.)

Thus, most states, including Utah, rely on the ABA's "stamp of approval" to ensure that applicants have had the opportunity to acquire the requisite knowledge and skills necessary to practice law. These important qualities serve not only the public's but the legal profession's best interests.

Utah also relies on the Code of Recommended Standards for Bar Examiners for guidance in admission-related areas. The American Bar Association, the National Conference of Bar Examiners and the Association of American Law Schools have made a number of recommendations to bar association authorities who are

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[9] Official ABA Guide to Approved Law Schools 2001 edition at p. 10, Rick L. Morgan and Kurt Snyder, editors: IDG Books Worldwide, Inc.

vested with responsibilities and duties by the courts with respect to the admission to practice law. The Code of Recommended Standards for Bar Examiners was adopted by these policy-making bodies in 1959 and has been updated over time. The guidelines were promulgated in the hope they would lead toward uniformity of objectives and practices in bar admissions throughout the United States. One of the recommendations, Section II (6) (Eligibility of Applicants) reads as follows:

> Law School Education. Each applicant should be required to have completed all requirements for graduation with a J.D. or LL.B. degree from a law school approved by the American Bar Association before being eligible to take [sic] bar examination, and to have graduated therefrom before being eligible for admission to practice. *Neither private study, correspondence study or law office training, nor age or experience should be substituted for law school education.*[10]

In accordance with this recommendation, Rule 3-1(3) requiring that a student applicant graduate from an ABA approved law school was adopted by this Court on January 17, 1970. A large number of other states which rely upon the Code of Recommended Standards for Bar

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[10] Comprehensive Guide to Bar Admission Requirements, 2000 edition at p. vii; American Bar Association Section of Legal Education and Admission to the Bar and the National Conference of Bar Examiners.

Examiners have a similar rule. For those jurisdictions which have not adopted the requirement to graduate from an approved law school, other compensating factors in the admission process should be taken into consideration before a comparison is made. For instance, the examination passing threshold may be set higher, or the examination itself may be more difficult than in a jurisdiction which requires an approved law school education. In other words, the requirement contained in Rule 3-1(3) should not be viewed in isolation but as part of an entire admissions program. The Bar considers its admission requirements reasonable and the admission program to be balanced, fair and a reasonable use of resources.

The Petitioner's request would require that his legal experience be evaluated to determine if it were substantially equivalent to that of an ABA approved law school graduate. Evaluating the quality of an individual's "law office education" is a time consuming and necessarily subjective task which undoubtedly accounts for the smaller number of states that permit it. According to the most recent National Conference of Bar Examiner's complied statistics, only four (4) states permit some variation of law office study to substitute for a law graduation requirement: California, New York, Vermont and Virginia.[11] The Bar would be happy to provide more

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[11] A total of 53 "law office-educated" individuals qualified in 1999 to take bar examinations as follows: California (18 applicants); New York (11 applicants); Vermont (12 applicants); and Virginia (12

detailed information relating to these states' programs, e.g. difficulty of the exam, overall passing rate, available Bar resources, etc. if the Court would find it helpful.

RULE 3-1(3) DOES NOT PROVIDE FOR A WAIVER

The Rules Governing Admission do not provide for waivers and the Bar routinely refuses such requests as it has no authority to grant them. Over the years and insofar as the Bar can ascertain, this Court has granted a request for a waiver in only one instance. (See Exhibit "D" for a copy of the Order.) In 1992, Preston Regehr, a Canadian law school graduate, petitioned the Court for a waiver from the requirement that all applicants must have graduated from an ABA approved law school. Mr Regehr argued that his Canadian law school education was substantially equivalent to that of an ABA approved law school and that because Canadian law schools were ineligible for ABA accreditation, the requirement was

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applicants). Out of those individuals taking the examination, 11 passed resulting in a 21% passing rate. The passing rate for jurisdictions permitting non-ABA law school graduates to take the examination is similar to the rate of "law office-educated" applicants: only 26% of the 3,498 applicants were determined to have passed the examination in 1999. In contrast, 69% of ABA approved law school graduates consisting of 65, 264 applicants in 1999 passed the examination. All statistics are taken from The Bar Examiner [Journal], vol. 69, no. 2, May 2000 edition published by the National Conference of Bar Examiners.

manifestly unfair. He also argued that a majority of U.S. jurisdictions provided for foreign law school graduate admission if, in addition to meeting other requirements, the foreign law school was in a country where English common law formed the basis for that country's system of jurisprudence.

The Court determined that some foreign law schools may indeed provide a quality education equivalent to ABA approved law schools and it was unfair to automatically exclude applicants in this group when their schools were ineligible to apply for ABA accreditation. However, the Court did not want the Bar (or the Court for that matter) to expend resources attempting to inexpertly evaluate foreign law school graduates. (See Exhibit "A" for a copy of rule.) [Omitted from this petition for certiorari]. The Foreign Law School Applicant Rule provides that certain foreign law school graduates who have not graduated from an ABA approved law school are permitted to take the bar examination under the following conditions:

> Section 3-2(3). Foreign Law School Applicants. Applicants who have not graduated from an ABA accredited law school, but who have graduated from a foreign law school in a country where principles of English common law form the basis for the country's jurisprudence, may be recommended for admission to the Bar under the following conditions: . . . have (a) been admitted to practice law in the jurisdiction where the applicant attended law school, and (b) successfully completed, within twenty-four (24) consecutive

> months, not less than twenty-four (24) semester hours, or their equivalent in quarter hours, at an ABA-approved law school, including no less than one course each in constitutional law, civil procedure, criminal procedure, legal ethics and evidence.

The Bar submits that the Petitioner's case is distinguishable from Mr. Regehr's case. First, the waiver in the Regehr matter was not granted on an *ad hoc* basis but rather was linked to creation of a new admission rule. Second, a number of other states had already considered and adopted a foreign law school graduate rule much like the one this Court approved. Thus, there was a plethora of research and information on the subject readily available. Third, the waiver did not require the Bar (or Court) to engage in a burdensome evaluation process to be repeated in the future as similarly situated applicants applied for admission. And finally, the new admission rule, which imposed additional legal course work at an ABA approved law school, was deemed to maintain the high standards for admission set by the Bar and approved by the Court.

CONCLUSION

In conclusion, the Bar's Rules Governing Admission are a product of thoughtful research and careful consideration. They are an integral component of the entire admissions program. Rule 3-1(3) requires that student applicants must graduate from an ABA approved law school before being permitted to take the examination. The requirement is purposeful, rational and serves the legal profession's and public's best interests. The Bar

respectfully requests this Court to deny the Petitioner's request for a waiver of Rule 3-1(3).

Dated this 1st day of June, 2001

UTAH STATE BAR

s/Katherine A Fox
Katherine A. Fox
General Counsel

ADDENDUM 'D'

IN THE SUPREME COURT OF THE STATE OF UTAH

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Regular May Term, 1992 July 10, 1992

In Re: Preston Collet Regehr No. 910338

ORDER

Petitioner's motion for an order waiving requirements of Rule 3-1(3) of the Rules Governing Admission to the Utah State Bar is granted.

It is hereby ordered that the petitioner shall be permitted to take the exam for admission to the Utah State Bar as soon as practical.

s/Gordon R. Hall
GORDON R. HALL
Chief Justice
Utah Supreme Court

Jason K Jensen
Petitioner Pro Se
180 South 300 West, Suite 210
Salt Lake City, Utah 84101-1490
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FILED
JUNE 13 2001
CLERK SUPREME COURT
UTAH

IN THE UTAH SUPREME COURT

—— oooOooo ——

In re:	)
	) NOTICE TO SUBMIT
	) FOR DECISION
	)
JASON K JENSEN	)
	) Case No. 20010393-SC
	)

Comes now the Petitioner, Jason K Jensen, pro se, and pursuant to Rule 4-501, *Utah Code of Judicial Administration*, hereby gives notice that the Petitioner's ex parte Application for Ex Parte Proceeding, dated May 7, 2001, is ready to submit for decision. The Court may require notice to the Utah State Bar and additional briefing, if desired. No response or reply has been submitted by Petitioner or the Utah State Bar.

Dated this 13th day of May, 2001.

s/Jason K Jensen
JASON K JENSEN
Petitioner Pro Se

Jason K Jensen
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Fax: (801) 595-0300

ORIGINAL

F I L E D
JUNE 13 2001
CLERK SUPREME COURT
UTAH

IN THE UTAH SUPREME COURT

---- oooOooo ----

In re:	)
	) **PETITIONER'S BRIEF**
	) **IN SUPPORT OF WAIVER**
	)
JASON K JENSEN	)
	) Case No. 20010393-SC
	)

Comes now the Petitioner, Jason K Jensen, pro se, and pursuant to the Court's order of June 11, 2001 denying a hearing and placing this matter on it's law and motion calendar for June 18, 2001, hereby submits this Brief in support of Petitioner's Petition for a Waiver of Rule 3-1 of the Rules Governing Admission to the Utah State Bar.

ARGUMENT
THE PETITIONER IS ENTITLED TO A WAIVER AND DUE PROCESS PROTECTION.

A. Exceptional Circumstances Mandate an Investigation–the Bar Cannot Avoid It's

Obligation to Investigate.

The American Bar Association recognizes that there are extraordinary cases where a person may waive the rules. For example, one wishing to apply to law school may seek a waiver of the undergraduate requirement. Standard 502 of the ABA's Standards for Approval of Law Schools, as it pertains to the Education Requirements, provides in pertinent part:

> (b) In an extraordinary case, a law school may admit to its J.D. degree program an applicant who does not possess the educational requirements of subsection (a) if the applicant's experience, ability, and other characteristics clearly show an aptitude for the study of law. The admitting officer shall sign and place in the admittee's file a statement of the considerations that led to the decision to admit the applicant.[12]

Id., Addendum A. [Omitted from this petition for certiorari].

The Arizona Supreme Court granted an application for admission to the bar, in *Application of Levine*, 397 P.2d 205 (Ariz. 1965) where the State Bar refused to recommend an applicant who apparently met the

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[12] Subsection (a) requires that an applicant possess either a bachelor's degree or successful completion of three-fourths of the work acceptable for a bachelor's degree.

qualifications for admissions. In dicta, the Arizona court reasoned:

> We have held the practice of law rises above that of a mere privilege. For those who have the necessary qualifications, it is a right. *Application of Burke*, 87 Ariz. 336, 351 P.2d 169. The right to practice law is neither greater nor less than the right to engage in other occupations, businesses or trades, for the right to seek and retain employment is shared by all equally and to be equal must be upon the same conditions. It cannot be treated as a matter of grace or favor, *Willner v. Committee on Character and Fitness of New York*, 373 U.S. 96, 80 S. Ct. 1175, 10 L. Ed. 2d 224.

Id , at 206-207. (Emphasis added).

Also the Court stated, "It is the duty of the [Committee on Examinations and Admissions] to investigate the qualifications and his fitness to practice law." *Id.*, at 207. "At all stages in the investigation, it is the applicant's right to produce witnesses, and evidence on his own behalf and, if there are accusers and adverse witnesses, to be confronted by and to examine them. *Id.* The court concluded then it was the responsibility of the committee to recommend those applicants who, in its opinion, have satisfactorily established their qualifications. *Id.*

In this matter, the Board of Commissioners claim that it is not there responsibility to examine Mr. Jensen's application or his qualifications. Surely, the standard

providing for a Law Degree is a presumption that can be rebutted. Not every person possessing a law degree will make a good attorney. In comparison, there are good persons without a law degree that likewise possess the necessary aptitude and experience that qualifies them to be a great attorney. Mr. Jensen can prove this with the adequate opportunity for a hearing, or the results of his Bar Exam should speak clearly on his behalf.

In the case *Nall v. Board of Examiners*, 646 P.2d 1236 (N.M. 1982), the New Mexico Supreme Court followed its Board of Examiners not to recommend admission to the bar based upon its findings of various felonies and misdemeanors listed in the applicant's application which called her moral character and fitness into question. The recommendation was followed. The New Mexico court stated:

> This Court must independently examine and weigh the evidence and then pass upon its sufficiency. A particular case must be judged on its own merits, and an ***ad hoc*** determination in each instance must be made by this Court. *Application of Klahr*, 102 Ariz, 529, 433 P.2d 977 (1967).

Id., at 1239 (Citation omitted). (Emphasis added).

Regarding Mr. Jensen's application for a waiver, the Utah State Bar suggests in its Response that it cannot conduct an ad hoc investigation into Mr. Jensen's qualifications. The Bar informed Mr. Jensen that the one waiver this Court has granted in the past was "linked to the creation of a new admission rule." It claimed that the

waiver led to the development of the "foreign law school graduate rule" and that much of the research and information on the subject was readily available. Apparently the Bar believes that evaluating Mr. Jensen's qualifications and fitness would be a burdensome process–in excess of what it already performs for other applicants. This claim is without merit. The Bar is charged with the duty to examine and evaluate prospective applicants. They already have the obligation to conduct these investigations. Mr. Jensen is not asking the Bar to do anything differently than it already does for this Court. Mr. Jensen will still have to pass the moral character and fitness aspect of the application process. Mr. Jensen will still have to undertake the Bar Examination. Mr. Jensen is merely asking for a waiver of the Law Degree Requirement of Rule 3-1 from this Court. The Bar itself claims that a law degree is merely a demonstration of an academic achievement.[13] Moreover, the Bar claims that it can teach its members "what they didn't teach you in law school." See Addendum B. [Omitted from this petition for certiorari].

Through Mr. Jensen's experience and legal training in the classroom and in the law office, he has surpassed the aptitude for the study of law and should be granted a waiver so that he may proceed with the admissions process

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[13] Moreover the allegation in his petition had not be denied by the Bar in its response and should be presumed to be uncontroverted pursuant to Rule 12 of the Utah Rules of Civil Procedure as no Affirmative Defenses had been alleged by the Bar.

in time for the July 2001 Bar Examination.

Moreover, as arguendo, if this Court is inclined to explore the possibility of adding a new admissions rule governing "law office-educated" individuals as the Bar describes them in its response, the Court would not have to look very far. The Bar pointed out that California, New York, Vermont, and Virginia all have that program in effect.[14] The Court should note that in its apparent attempt to prejudice Mr. Jensen before this Court, this Court should take note to the statistics quoted. The Bar claims that there were 11 individuals that were qualified and passed the Bar Exam out of 53. Mr. Jensen exclaims that he should not be deprived of that same opportunity merely based upon geographic differences. He is a law office-educated individual that should be afforded equal opportunity and protection under the law. Moreover, in comparison with ABA law school graduates, there was only a 48 percentile difference.[15] Nevertheless, statistically speaking, this Court should examine Mr. Jensen's qualifications on an ad hoc basis–he is entitled to such an open and thorough examination.

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[14] California and New York are two of the biggest states per capita in the nation.

[15] 11:53 law office-educated versus 45,032:65,264 of ABA approved law school graduates. What explains why 20,232 ABA law school graduates did not pass their bar examinations in 1999? Was it inadequate education? Inferior facilities?

In the U.S. Supreme Court case, *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 83 S. Ct. 1175 (1963), the Court explored whether an applicant was deprived of due process when the applicant was not afforded notice of and a hearing on the grounds for his rejection. The Court stated:

> A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. (Citations omitted) As the Court said in *Ex Parte Garland*, 4 Wall. 333, 379, 18 L. Ed. 366, the right is not "a matter of grace and favor."

Id., at 102. Moreover, the Court stated, "Petitioner was clearly entitled to notice of and a hearing on the grounds for his rejection either before the Committee or before the Appellate [Court]." In this matter, the Petitioner has demanded a hearing and the opportunity to present his case before this Court in order to present evidence of and to demonstrate his readiness to sit for the Bar Examination. This demand affords him the right to a full hearing. Mr. Jensen believes he to be allowed to sit for the Bar Exam as any ABA approved graduate under Rule 3-1.

The *Willner* Court defined a "full hearing," having this to say:

> But a "full hearing"–a fair and open hearing–requires more than that. * * * Those who are brought into contest with * * * Government in

> a quasijudicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command. *Morgan v. United States*, 304 U.S. 1, 18-19, 58 S. Ct. 773, 776, 82 L. Ed. 1129.

Id., at 105. In this matter, Mr. Jensen has requested a hearing pursuant to Rule 4-501 of the Utah Code of Judicial Administration, thus assuring him the right to a full hearing both by rule and as afforded by due process. Obviously, if the decision is not adverse to him then Mr. Jensen cannot complain about the outcome. However, in the event that the Court rules against Mr. Jensen without the benefit of a "full hearing" regarding his qualification and experience, then Mr. Jensen will have been deprived of these procedural rights.

C. Foreign Applicants are Graced By Rule 3-2, But Mr. Jensen, a U.S. Citizen, is Being Denied His Right Guaranteed By the Constitutions?

This Court, in *In re Petition of John Randolph-Send*, 669 P.2d 400, (Utah 1983), has addressed the powers of Utah's integrated bar, and of this Court's power to supervise stating, inter alia:

> Inherent as those [the bar's] power may be, they are not absolute. One of the limitations placed upon us is the duty to assure that a rational procedure was followed in subsequently admitting some, but not others, of those applicants . . . .

Id. This Court must assure that even though there are procedures in place for some different classes of applicants, while they are to the detriment of its own citizens. Just like Mr. Preston Collet Regehr–as pointed out by the Bar–he was not recommended as being qualified to sit for the Bar examination. He did not attend and complete a law school program that was approved by the ABA. Thus he was excluded, and then the Court created Rule 3-2 pertaining to Foreign Law School Applicants. The ABA does not accredit foreign law schools. However, a foreign applicant still can be qualified to apply under Rule 3-2 if he graduated from a foreign law school in a country where principles of English common law form the basis for the country's jurisprudence.

Meanwhile, Mr. Jensen has been practicing under the supervision of an licensed attorney where the principles of English common law had formed the basis of the country's jurisprudence. Albeit, his practice has been limited as a paralegal, or in British commonology[16] "a squire"(an understudy) rather than as an attorney. But in a state where common law principles are continually being replaced by the more and more uniquely sophisticated Statutory Code (known in Utah as the Utah Code) it would appear that some reconsideration is needed. See *Utah Code Ann.* § 68-3-1 (1953, as amended).[17]

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[16] A hyperbole–not to be taken literally.

[17] This section of the Utah Code provides that the principles of English common law are adopted

The distinction between foreign applicants has been explained by the Arizona Supreme Court, in *Application of Schlittner*, 704 P.2d 1343 (Ariz. 1985). That court stated:

> An applicant who has graduated from a law school in the English speaking world with a common law tradition should be permitted to apply for examination and admission when the applicant shows that in addition to other requirements as set forth in the Rule, that the law school from which he graduated is the equivalent of a law school approved by the American Bar Association. Of course, it is the responsibility of the applicant to convince us that the law school from which he has graduated possesses the high standards required by the American Bar Association. In this, we realize that we are according to foreign law schools a privilege that we do not extend to graduates of American Law Schools not approved by the American Bar Association. We do not, however, find this disturbing for two reasons. First, an American non-accredited law school has the opportunity to be accredited by the American Bar Association upon application and inspection of their facilities. The American Bar Association does not accredit foreign law schools and, therefore, the foreign law school does not have this opportunity. Second, it is still the responsibility of

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insofar as they are not repugnant or in conflict with the laws of this state.

> the applicant to show by convincing evidence that the law school from which he has graduated does meet the standards of the American Bar Association. If the applicant cannot show this, he may still show that he has practiced in an English speaking jurisdiction following the common law tradition for five out of the last seven years. This requirement is the same for the foreign applicant as it is for the graduate of the non-accredited American law school.

Id. The implementation of application rules encouraging foreign applicants does not withstand sound reasoning where a U.S. Citizen, like Mr. Jensen, with 7 years of law office experience, an additional year internship, and three years of law related undergraduate training all in the State of Utah is to be excluded from applying. The First Ten Amendments known as the Bill of Rights were created to protect the individual. Mr. Jensen is more than a U.S. Citizen, he is a Utahn. Both the U.S. and State Constitutions afford him certain inherent and inalienable rights. These rights afford him greater protection in his pursuit of an attorney occupation within the boundaries of this State than the admission rules should grace to a foreign applicant. Meanwhile, note that the ABA accreditation standards applies to facilities not individuals. In short, the reasoning behind the two separate treatments of applicants is because the American Bar Association does not accredit foreign law schools–it cannot.

Meanwhile, Mr. Jensen is more proficient in Utah Law than any foreign applicant can reasonably conceive at

an entry level. During the pursuit of his studies and his career, Mr. Jensen has dedicated himself to the study of Utah Law and has won the respect of constituents. Licenced attorneys turn to him for advice because he is proficient in his understanding and update on the law.

Meanwhile, a justice court judge in the State of Idaho received a waiver from the Idaho Supreme Court based in part on his experience. In the case, *In the Matter of Richard Allen Schmidt*, 604 P.2d 1208 (Idaho 1980), the court reasoned:

> Under the circumstances presented by this case, we hold that petitioner's experience is the functional equivalent of that required by Rule 104. He has served as a lay magistrate in Idaho for some five years, dealing with the law and evaluating the work product of numerous lawyers on a daily basis. He graduated from a law school which, while not accredited by the American Bar Association, is accredited by the State of California, and he has been admitted to practice before the Supreme Court of California.

Id. In that matter, it is clear that because his admission to practice law in California had some bearing on the case, the fact remains though that the court did consider and gave great weight to the fact that he acted as a lay magistrate and on a daily basis evaluated the work product of attorneys. In the matter before this Court, Mr. Jensen presents for this Court's consideration that he is one that has prepared attorney work product for seven years for judge's and justices to evaluate–unknown to

them. He is meticulous to detail; he cares about the clients and the work prepared on their behalf.

In closing the Court should consider a quote from this Court in *Koch v. Telluride Power Co.*, 209 P.2d 241 (Utah 1949), wherein it eloquently declared:

> While training in college may be of distinct advantage such an education does not conclusively establish that those who are trained on a job and acquire knowledge by practical experience are less learned.

Id., at 245. Certainly in the application for the Admissions to the Bar, a law school graduate has a distinct advantage regardless of his intelligence or his abilities. He only has to have this degree. To those who couldn't afford law school such as Mr. Jensen he is forced to acquire his knowledge from practical experience. He is not to be considered any less learned–just disadvantaged in the application process. It is left to him to prove his abilities in this Court. Nonetheless, Mr. Jensen is entitled to a full hearing on this matter if this Court is inclined to summarily rule against him and in favor of the Bar.

CONCLUSION

Based upon the foregoing, the Petitioner hereby requests that this Honorable Court grant the Mr. Jensen a waiver of Rule 3-1. In the alternative, if the Court is inclined to rule against him, he is entitled to a full hearing on the matter wherein he may present evidence, confront

his accusers, and cross-examine witnesses in the presentation of his case rebutting the ABA law school graduate presumption.

Dated this 13th day of June, 2001.

/Jason K Jensen
JASON K JENSEN
Petitioner Pro Se

Petitioner's Address is:
240 Crestone Avenue
Salt Lake City, Utah 84115

VERIFICATION

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On this day personally appeared before me **Jason K Jensen,** to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged the execution of the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

s/D. Bruce Oliver
Notary Public in and for the
State of Utah, residing at: SLC
My Commission expires:
7/25/04

[SEAL]

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing **BRIEF IN SUPPORT OF WAIVER**, via U.S. Mail, postage prepaid, to: Katherine A. Fox, 645 South 200 East, Salt Lake City, Utah 84111.

Dated this 13th day of June, 2001.

s/Jason K Jensen

Jason K Jensen
Petitioner Pro Se
180 South 300 West, Suite 210
Salt Lake City, Utah 84101-1490
Telephone: (801) 328-8888
Fax: (801) 595-0300

ORIGINAL

F I L E D
JUNE 28 2001
CLERK SUPREME COURT
UTAH

IN THE UTAH SUPREME COURT

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In re:	) **MOTION TO ALTER OR**
	) **AMEND JUDGMENT**
	) **DE NOVO EN BANC**
	)
JASON K JENSEN	)
	) Case No. 20010393-SC
	)

Comes now the Petitioner, Jason K Jensen, pro se, and hereby moves this Honorable Court for a new trial, in the alternative, to alter or amend judgment regarding the Petitioner's Petition seeking a waiver of the Rule 3-1 law degree requirement. Moreover, the Petitioner requires clarification of the June 18, 2001 decision. Finally, the Petitioner believes the decision inherently requires the decision from the court, en banc, as it pertains the rule making authority of the Court which may not be decided by a single justice but rather requires a majority vote by all of the Court.

This Motion is supported by the attached verified memorandum of points and authorities, which is

incorporated herein by this reference.

Dated this 28th day of June, 2001.

s/Jason K Jensen
JASON K JENSEN
Petitioner Pro Se

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing **MOTION TO ALTER OR AMEND JUDGMENT DE NOVO EN BANC**, via U.S. Mail, postage prepaid, to: Katherine A. Fox, 645 South 200 East, Salt Lake City, Utah 84111.

Dated this 28th day of June, 2001.

s/Jason K Jensen

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ORIGINAL

FILED
JUNE 28 2001
CLERK SUPREME COURT
UTAH

IN THE UTAH SUPREME COURT

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In re:	)VERIFIED MEMORANDUM) MOTION TO ALTER OR) AMEND JUDGMENT) DE NOVO EN BANC)
JASON K JENSEN	)) Case No. 20010393-SC)

Comes now the Petitioner, Jason K Jensen, pro se, and hereby submits this Verified Memorandum in support of his Motion to Alter or Amend Judgment De Novo En Banc.

UNDISPUTED FACTS

1. On or about May 1, 2001, Jason K Jensen (hereinafter, the "Petitioner") filed a Verified Petition seeking a waiver of the Rule 3-1 law degree requirement.

2. On or about May 7, 2001, the Petitioner filed an Application for Ex Parte Proceeding claiming first

that the Utah State Bar (hereinafter, the "Bar") is an integrated bar with the Supreme Court. Through this principle-agent relationship the Bar would have an unfair advantage over the Petitioner in any proceeding

3. The second claim the Petitioner raised was that the Bar lacked standing in light of the integrated scheme–the Bar has not been bestowed, conferred or delegated the authority to do so.

4. On or about the same date, the Bar through general counsel, Katherine A. Fox, wrote an ex parte letter to the Court requesting whether a response to the Petition was requested.

5. Mr. Jensen does not know whether the Court responded to the letter. However, on June 2, 2001, Mr. Jensen received a response from the Bar. The response is entitled Response to Verified Petition for Admission to the Utah State Bar.

6. The Bar was mistaken, Mr. Jensen was not petitioning for admission to the Bar, just a waiver of the law school requirement.

7. Thereafter, on June 11, 2001 the Court calendared the Petitioner's Verified Petition, his Application for Ex Parte Proceeding, and Request for Hearing on the Court law and motion calendar.

8. The only motion pending was the application to proceed ex parte.

9. Rather than making a ruling on the pending motion, the court summarily denied the Petitioner's cause of action.

10. It is not clear to Petitioner whether the Court understood the issues before the court. Just as the Bar believed, did this Court believe the Petition to be seeking admission to the bar?

11. This Court is the rule making body regarding the practice of law. In as much it is the Court of original jurisdiction.

12. As the Court of original jurisdiction, it is the trial court for the Petitioner and his cause of action. He is entitled by both Constitutions to a trial on the merits. And he is entitled to a full and open hearing.

13. However, rather than ruling on the Petitioner's pending motion, the Court through a single justice, Christine M. Durham, denied the Petitioner's Petition.

14. Justice Durham ruled, "The standards . . . apply equally to all applicants, and no exceptional circumstances have been presented why the court should be compelled to deviate from those standards.

15. It is not clear to the Petitioner whether the court considered his Brief which was filed on June 15, 2001.

16. Within the brief, Petitioner argues many

points including: (1) the right to practice law for those who are qualified, (2) the right of a litigant to a full and open hearing before this court or the Bar Commissioners, and (3) standards as provided by the ABA are presumptive, and therefore evidence a prima facie case, but that they may be rebutted on a case-by-case basis.

17. It is not clear to the Petitioner whether the court agrees with the arguments of the Petitioner.

18. The Petitioner is entitled the right of due process, which include the myriad of other rights, including but not limited to, the right of confrontation, the right to a trial, the right to a fair and just tribunal, the right to compel witnesses in his defense.

19. The pleadings filed by the Petitioner were notice pleadings, for providing notice only. They were not the totality of the Petitioner case in chief. The Petition had not yet made known, but that he had witnesses, and exhibits that he intended to rely on in presentation of his case at trial or a hearing once scheduled.

20. The Court's decision of June 18, 2001, foreclose the Petitioner from presenting his case in a trial or other hearing.

ARGUMENT

POINT I. THE PETITIONER IS ENTITLED TO A TRIAL BEFORE THIS COURT–AND NOT JUST MERELY A SUMMARY RULING FROM A SINGLE JUSTICE.

With all due respects to Her Honor Justice Durham, a decision on this matter was sought, and a ruling he got. However as the exclusive ruling making body regarding the practice of law, the Petitioner is entitled to a trial before the entire Supreme Court. Just as a bill is submitted to the legislature and put to vote in open public proceedings, the Petitioner's Petition is to be afforded the same due process consideration including a trial before this tribunal. The effect of the June 18, 2001 decision is a secreted closed decision without treating the Petitioner fairly or [justly].

The decision is contrary to the U.S. Supreme Court's decision of *Willner v. Committee on Character and Fitness of New York*, 373 U.S. 96, 80 S. Ct. 1175, 10 L. Ed. 2d 224, (affording a party to a full and open hearing) as raised in his Brief. It is contrary to this Court's prior decision *Nelson v. Jacobsen*, 669 P.2d 1207 (1983) (Where ambiguous notice to parties of the nature of the proceeding or sufficiently in advance to permit preparation). Also, it is against this Court's prior decision *Thompson v. Anderson*, 107 Utah 331, 153 P.2d 665 (1944) (Where a litigant fails to timely make a jury demand that the matter will be set on the court's non-jury calendar for trial).

CONCLUSION

This Court should appropriately set this matter for trial before the entire Court (en banc). In the alternative, the Petitioner is willing to accept a decision from the Court to delegate this matter before the Board of

Commissioner for its recommendations so long as the process affords the Petitioner a full and open hearing wherein he may present witnesses and exhibits.

Dated this 28th day of June, 2001.

s/Jason K Jensen
JASON K JENSEN
Petitioner Pro Se

Petitioner's Address is:
240 Crestone Avenue
Salt Lake City, Utah 84115

VERIFICATION

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On this day personally appeared before me **Jason K Jensen,** to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged the execution of the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

s/D. Bruce Oliver
Notary Public in and for the
State of Utah, residing at: SLC
My Commission expires: 7/25/04

[SEAL]

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing **MEMORANDUM,** via U.S. Mail, postage prepaid, to: Katherine A. Fox, 645 South 200 East, Salt Lake City, Utah 84111.

Dated this 28th day of June, 2001.

s/Jason K Jensen

AMERICAN BAR ASSOCIATION

STANDARDS
FOR APPROVAL OF LAW SCHOOLS

American Bar Association
Section of Legal Education and Admissions to the Bar
750 North Lake Shore Drive
Chicago, IL 60611
(312) 988-6738
Fax: (312) 988-5681
www.abanet.org/legaled

July 11, 2000

FOREWORD

Concern for improving the competence of those entering the profession was a major reason for creating the American Bar Association in 1878. These Standards for the Approval of Law Schools by the American bar Association re promulgated to serve this objective. The Association remains vitally and actively interested in improving the legal profession through legal education.

Accrediting Agency Law. Since 1952 the Council of the Section of Legal Education and Admissions to the Bar has been approved by the U.S. Department of Education as the recognized national agency for the accreditation of professional schools of law. It is the Council and not the Association which is so recognized, As a non-governmental accrediting agency it has been a member since 1966 of the national organization of peer professional accrediting agencies–initially the National Commission on Recognition of Postsecondary Accreditation and then the Council on Recognition of Postsecondary Accreditation. This body has now been succeeded by the Council for Higher Education Accreditation.

The vast majority of the highest courts of the states rely upon the Association approval of a law school to determine whether their legal education requirement for admission to the bar is satisfied. Obviously, whether a jurisdiction requires education at an ABA approved law school is a decision made by a jurisdiction's bar admission authority and not by the Council nor the ABA.

The American Bar Association believes that every candidate for admission to the bar should have graduated from a law school approved by the ABA, that graduation from a law school alone should not confer the right of admission to the bar, and that every candidate for admission should be examined by public authority to determine fitness for admission.

History. The American Bar Association (ABA) in 1879 established as one of its first committees, the Standing Committee on Legal Education and Admissions to the Bar. In 1893, the Section of Legal Education and Admissions to the Bar was established as the Associations's first section. Recognizing the need to take further steps to improve legal education, the Section leadership played the major role in creating the Association of American Law Schools in 1900, giving it a modest regulatory role through requirements for membership. In 1921 the American Bar Association promulgated it [sic] first Standards for Legal Education

To administer its program of approval lf law schools meeting the Standards, the ABA in 1927 employed Professor H. Claude Horack of the University of Iowa College of Law as the first Advisor to the Section. When Professor Millard H. Ruud of the University of Texas was appointed in 1968 to replace Advisor to the Section Dean John G. Hervey of Oklahoma City University School of Law, the title was changed to Consultant on Legal Education to te American Bar Association to recognized the broader responsibilities of the position. Professor James P. White of Indiana University School of Law–Indianapolis succeeded

Professor Ruud in January 1974 and continues to serve in that position.

A major revision of the 1921 Standards and its Factors was promulgated in 1973. This process began in the late 1960's. The first draft was distributed for comment in December 1971 to the chief appellate judge in each state, deans of all approved law schools, chairs of the board of examiners in each state, and members of the Section. About one hundred practitioners, judges, deans, and law teachers participated in discussions of the first and second drafts on April and May 1972. The Section at its annual meeting on August 15, 1972 approved the Standards. During its midyear meeting of February 12, 1973, the House of Delegates adopted the Standards and Rules of Procedure.

Standards and Rules Revision. In 1988 Judge Henry Ramsey, Jr., of the Alameda County, California, Superior Court and Chair-Elect of the Section , [sic] was asked to chair a study of the accreditation process. The purpose of the study was to determine what changes were needed to conform the Rules of Procedure to the Criteria of Nationally Recognized Accrediting Agencies and Associations promulgated by the United States Department of Education. A number of revisions to the Rules of Procedure, both conforming the Rules to the DOE Criteria and making other changes to improve the process, were adopted by the Council in 1989.

In 1992 the Council launched a formal revision of the Standards and their interpretations. Two decades of amending and adding particular Standards and

Interpretations left the Standards and Interpretations with some apparent inconsistencies in substance and certainly in drafting style. A five-person subcommittee of the Standards Review Committee undertook a formal revision of the Standards and their Interpretations. The style rules of the National Conference of Commissioners on Uniform State Laws were used as its drafting guidelines. As the project proceeded the Standards Review Committee reviewed the drafts. In response to the drafting subcommittee's request, the Committee resolved ambiguities and apparent inconsistencies.

The completion of the formal revision permitted the Standards Review Committee to turn its attention to substantive revision. The process was begun in 1994. The product of that process was circulated for comment and extensive hearings were held on the proposals. The revised Standards were approved by the Council and overwhelmingly adopted by the House of Delegates in August, 1996.

The Standards recognize and encourage diversity in curriculum, methods of instruction, and among students, faculty, and staff. The Association believes that this diversity advantages the course of quality legal education.

Wahl Commission. In April 1994 the Council established the Commission to Study the Substance and Process of the American Bar Associations' Accreditation of American Law Schools. Justice Rosalie E. Wahl of the Supreme Court of Minnesota and a former chairperson of the Section accepted appointment as chairperson. Members of the Commission included two appellate court

justices, six practitioners, a university president who is also a former president of the ABA, six Deans, and the general counsel of the state bar association.

The Wahl Commission's mandate was to conduct a thorough, independent examination of all aspects of law school accreditation by the ABA. Upon the basis of hearings, solicited written comments, and surveys, the Commission prepared a report for submission at the 1995 annual meeting of the ABA.

Validity and Reliability. Dr. William J. McLeod, former vice president of the Council on Postsecondary Accreditation, served as consultant to the Council of the Section for its review of the validity and reliability of the Standards. In his 1989 report to the Council, Dr. McLeod concluded, upon the basis of his review of the Standards and their administration, and the deliberations at the 1989 Conference on Validity and Reliability of the Standards, that the overall objectives of the American Bar Association's program of accreditation of law schools are: to insure that legal education programs are of acceptable quality; to improve the quality of legal education in the United States; to promote through legal education high standards of professional competence, responsibility, and conduct; to protect the integrity of legal education and preserve its independence from inappropriate interference in its educational activities; to encourage equal opportunities for legal education and for access to membership in the legal profession to qualified persons, including those from groups who are or have been subjected to any form of discrimination; and to assure bar admissions authorities that the quality of legal education

provided by approved schools satisfies their legal education requirement for admission to the bar.

In response to the Department of Education, the Council again embarked on a validity and reliability study of the Standards, in addition to the Section continuing efforts to assure the validity and reliability of the Standards. Dr. William J. McLeod was again employed as consultant to the Council. On December 8, 1995 a special committee formulated with Dr. McLeod the plans for six year study which was received by the Council at its February, 1996 meeting.

DOJ Consent Decree. In June 1995, the United States Department of Justice filed a civil antitrust suit against the AA, alleging violations of antitrust laws in the accreditation program. The Proposal Final Judgment required that the ABA establish a special commission ti determine whether the Standards, Interpretations, and Rules of Procedure should be revised with respect to six matters. It was agreed by the Department and the ABA that the Wahl Commission's mandate be enlarged to include these matters and its tenure be continued. In response to this additional mandate, on November 27, 1995 the Wahl Commission submitted a supplement to its August 1995 report.

The civil suit was concluded by a final consent decree that was approved in June 1996. It includes a number of requirements concerning the Standards, many of which reflect revisions that the ABA had previously adopted. Among them are that compensation paid to faculty, deans or staff not be considered or even collected

by the ABA in the accreditation process. An exception is permitted where there is a complaint about discrimination. Also, the Standards may not specify that an approved law school may grant advanced standing for credit earned only at an ABA approved law school nor recognize a degree only from an approved law school as a condition of eligibility for a post-J.D. degree program. The requirements of the consent decree apply only to the ABA in its accreditation function, not to an approved law school.

Council Responsibility. The Council of the Section of Legal Education and Admission to the Bar recommends approval of law schools located in the United States, its territories, and possessions. It also approves foreign summer programs, semester abroad programs, cooperative programs for foreign study, and individual student study abroad programs. It also acquiesces in establishment of post-J.D. programs conducted by approved law schools.

Standards. The Standards describe the requirements a law school must meet to obtain and retain ABA approval. Consequently they are stated as "shall" or "must" rules, depending whether verb is the active or passive voice. There are, however, some "should" rules. Experience has demonstrated that following the "should" rule will enable a law school to provide a program of sound legal education. Accreditation historically has involved peer review and advice of peers. "Should" rules are consistent with this aspect of accreditation. If the Accreditation Committee notes that a law school is not complying with a "should" rule, it may note that as a

matter of concern in its action letter.

Interpretations. The Interpretations developed by the Council and its Accreditation Committee in applying the Standards to matters before them just recently became part of institutional memory. In due course the process was formalized and the Interpretations were formally adopted by the Council and published. All Interpretations are subjected to the same public comment and review process and approval procedures that apply to the proposed Standards.

Rules of Procedure. The Rules of Procedure implement the Standards. The Rules were revised in 1989, and are amended from time to time. Rules also are subjected to the same public comment and review process and approval procedures that apply to the proposed Standards.

Criteria for Approval of Foreign Programs. Under its authority "to adopt rules implementing the Standards" the Council has adopted criteria for the approval of certain programs. They include the Criteria for Approval of Foreign Summer Programs (June 1991, June 1994, June 1996, and August 1996); the Criteria for Approval of Semester Abroad Programs for Credit Granting Foreign Segment of Approved J.D. Programs (November 1992, June 1994, June 1996, and August 1996); the Criteria for Approval of Individual Student Study Abroad for Academic Credit (August 1993, and June 1994); and the Criteria for Approval of Cooperative Programs for Foreign Study (August 1993, June 1994, and June 1996).

PREAMBLE

The Standards for Approval of Law Schools of the American Bar Association are founded primarily on the fact that law schools are the gateway to the legal profession. They are minimum requirements designed, developed, and implemented for the purpose of advancing the basic goal of providing a sound program of legal education. The graduates of approved law schools can become members of the bar in all United States jurisdiction, representing all members of the public in important interests. Therefore, an approved law school must provide an opportunity for its students to study in a diverse educational environment, and in order to protect the interests of the public, law students, and the profession, it must provide an educational program that ensures that its graduates:

(1) understand their ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice;

(2) receive basic education through a curriculum that develops:

(i) understanding of the theory, philosophy, role, and ramifications of the law and its institutions;

(ii) skills of legal analysis, reasoning, and problem solving; oral and written communication; legal research; and other

fundamental skills necessary to participate effectively in the legal profession;

(iii) understanding of the basic principles of public and private law; and

(3) understand the law as a public profession calling for performance of pro bono legal services.

Chapter 3
PROGRAM OF LEGAL EDUCATION

Standard 301. OBJECTIVES.

(a) A law school shall maintain an educational program that prepares its graduates for admission to the bar and to participate effectively and responsibly in the legal profession.

(b) A law school shall maintain an educational program that prepares its graduates to deal wit current and anticipated legal problems.

(c) A law school may offer an educational program designed to emphasize certain aspects of the law or the legal profession.

Interpretation 301-1:
Among the factors to be considered in assessing the extent to which a law school complies with this Standard are the attrition rate of the school's students, and the bar passage and career placement rates of its graduates. (August 1997)

Standard 302. CURRICULUM.

(a) A law school shall offer to all students in its J.D. program:

(1) instruction in the substantive law, values and skills (including legal analysis and reasoning, legal research, problem

solving and oral and written communication) generally regarded as necessary to effective and responsible participation in the legal profession.

(2) at least one rigorous writing experience; and

(3) adequate opportunities for instruction in professional skills.

(b) A law school shall require of all students in the J.D. degree program instruction in the history, goals, structure, duties, values, and responsibilities of the legal profession and its members, including instruction in the Model Rules of Professional Conduct of the American Bar Association. A law school should involve members of the bench and bar in this instruction.

(c) The educational program of a law school shall provide students with adequate opportunities for small group experiences in seminars, directed research, small classes, or by collaborative work.

(d) A law school shall offer live-client or other real-life practice experiences. This might be accomplished through clinics or externships. A law school need not offer this experience to all students.

(e) A law school should encourage and provide opportunities for student participation in pro bono

activities.

(f) A law school may offer a bar examination preparation course, but may not grant credit for the course or require it as a condition for graduation.

Interpretation 302-1:
Instruction in professional skills need not be limited to any specific skill or list of skills. Each law school is encouraged to be creative in developing programs of instruction in professional skills related to the various responsibilities which lawyers are called upon to meet, using the strengths and resources available to the school. Trial and appellate advocacy, alternate methods of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting are among the areas of instrction in professional skills that fulfill Standard 302(a)(3). (August 1996; August 1999)

Interpretation 302-2:
A law school need not accommodate every student requesting enrollment in a particular professional skills course. (August 1996)

Interpretation 302-3:
Each law school shall engage in periodic review of the curriculum to ensure that it prepares the school's graduates to participate effectively and responsibly in the legal profession. (August 1999)

Chapter 5
ADMISSIONS

Standard 501. ADMISSIONS.

(a) A law school's admission policies shall be consistent with the objectives of its educational program and the resources available for implementing those objectives.

(b) A law school shall not admit applicants who do not appear capable of satisfactorily completing its education program and being admitted to the bar.

Interpretation 501-1:
A law school may not permit financial considerations detrimentally to affect its admission and retention policies and their administration. A law school may fact a conflict of interest whenever the exercise of sound judgment in the application of admission policies or academic standard and retention policies might reduce enrollment below the level necessary to support the program. (August 1996).

Interpretation 501-2:
A law school's admission policies shall be consistent with Standards 201, 211 and 301.

Standard 502. EDUCATIONAL REQUIREMENTS.

(a) A law school shall require admission to its J.D.

degree program a bachelor's degree, or successful completion of three-fourths of the work acceptable for a bachelor's degree, from an institution that is accredited by a regional accrediting agency recognized by the Department of Education.
(b) In an extraordinary case, a law school may admit to its J.D. degree program an applicant who does not possess the education requirements of subsection (a) if the applicant's experience, ability, and other characteristics clearly show an aptitude for the study of law. The admitting officer shall sign and place in the admittee's file a statement of the considerations that led to the decision to admit the applicant.

Interpretation 502-1:
Before an admitted student registers, or within a reasonable time thereafter, a law school shall have on file the student's official transcript showing receipt of a bachelor's degree, if any, and all academic work undertaken. "Official transcript" means a transcript certified by the issuing school to the admitting school or delivered to the admitting school in a sealed envelope with seal in tact. A copy supplied by the Law School Data Assembly Service is not an official transcript, even though it is adequate for preliminary determination of admission. (August 1996; July 2000)

Standard 503. ADMISSION TEST.

A law school shall require all applicants to take an

acceptable test for the purpose of assessing the applicants' capability of satisfactorily completing its education program. A law school that is not using the Law School Admission Test sponsored by the Law School Admission Council shall establish that it is using an acceptable test.

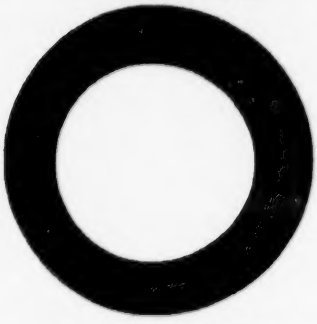
Standard 504. CHARACTER AND FITNESS.

(a) A law school shall advise each applicant that there are character, fitness and other qualifications for admission to the bar and encourage the applicant, prior to matriculation, to determine what those requirements are in te state(s) in which the applicant intends to practice. The law school should, as soon after matriculation as is practicable, take additional steps to apprise [sic] entering students of the importance of determining the applicable character, fitness and other qualifications.

(b) The law school may, to the extent it deems appropriate, adopt such tests, questionnaires, or required references as the proper admission authorities may find useful and relevant, in determining the character, fitness or other qualifications, it shall exercise care that the consideration is not used as a reason to deny admission to the qualified applicant because of political, social, or economic views that might be considered unorthodox.

RULES GOVERNING ADMISSION TO THE UTAH STATE BAR

Utah State Bar



Organized 1931

Utah State Bar

645 South 200 East
Salt Lake City, Utah 84111
Telephone (801) 531-9077

RULES GOVERNING ADMISSION TO THE BAR

RULE ONE
Definitions

Section 1-1. Definitions. As used in the rules relating to admission, the following terms shall be given the following meanings, except as otherwise provided or may result from necessary implication from the rule.

Approved Law School. An "approved law school" s one which if fully or provisionally approved by the American Bar Association pursuant to its Standards and Rules of Procedure for Approval of Law Schools.

Attorney Applicant. An "attorney applicant" is any person who satisfies the requirements of Rule 4.

Student Applicant. A "student applicant" is any applicant for admission to the Bar who does not qualify as an "attorney applicant" under Rule 4.

RULE THREE
Qualifications for Admission of Student Applicants

Section 3-1. Requirements of Student Applicants. To be recommended as a student applicant to the Bar, a person must:

1. Have filed an application for Bar Examination and Admission to the Bar as a student applicant in accordance with Rule 5;

2. Be at least twenty-one years old;

3. Have graduated with an LL.B, J.D. or equivalent degree from an approved law school.

4. Be of good moral character and have satisfied the requirements of Rule 6;

5. Have successfully passed the Bar Examination as prescribed in Rule 7;

6. Have complied with the provisions of Rule 12 concerning enrollment fees;

7. Have successfully passed the Multistate Professional Responsibility Examination (MPRE) as prescribed in Rule 7-8.

RULE FOUR
Qualifications for Admission of Attorney Applicants

Section 4-1. Requirements of Attorney Applicants. To be recommended as an attorney applicant to the Bar, a person must:

1. Have filed an application for Bar Examination and Admission to the Bar as an attorney applicant in accordance with Rule 5;

2. Be at least twenty-one years old;

3. Have been admitted to the practice of law before the highest court of a sister state or the District of Columbia for no less than five years, and have been substantially and lawfully engaged in the practice of law in such jurisdiction for any four of the five years immediately preceding the filing of the application. For purposes of this rule, the practice of law includes the following activities or equivalent thereof:

   (a) sole practitioner in a private law firm;
   (b) partner, shareholder, associate, or one of counsel in a private or public law firm;
   (c) officer of a corporation or other business organized whose principal responsibilities include rendition of legal advice and/or assistance;
   (d) government employee whose principal

duties are providing legal advice to the governmental agency by which he or she is employed or representing such agency before the courts;
(e) service in te armed forces in Judge Advocate department in a legal capacity in any state;
(f) judge of a court of general or appellate jurisdiction requiring admission to the Bar as a qualification for admission thereof;
(g) law clerk to a judge of a court of general or appellate jurisdiction;
(h) teaching full-time in an approved law school.

4. Be of good moral character and have satisfied the requirements of Rule 6;

5. Have successfully passed the Bar Examination as prescribed in Rule 10-1;

6. Have complied with the provisions of Rule 12 concerning enrollment fees;

7. Have successfully passed the Multistate Professional Responsibility Examination (MPRE) as prescribed in Rule 7-8.

IN THE SUPREME COURT
STATE OF UTAH
332 STATE CAPITOL
SALT LAKE CITY, UTAH 84114

September 5, 1991

OFFICE OF THE CLERK

Preston Collet Regehr
2632 Falcon Way
Sandy, Utah 84093

File

Petition for Waiver

In re: Preston Collet Regehr, Petitioner.

No. 910338

The above case is set for argument in this Court on Monday, September 16, 1991.

All cases are set for 9:00 a.m.

Geoffrey J. Butler
Clerk

NOTE: Oral argument shall be limited to 10 minutes per side absent exceptional circumstances.

IN THE SUPREME COURT
STATE OF UTAH
332 STATE CAPITOL
SALT LAKE CITY, UTAH 84114

October 8, 1991

OFFICE OF THE CLERK

Alan L. Sullivan
VAN COTT, BAGLEY, CORNWALL & MCCARTHY
50 South Main, Suite 1600
P.O. Box 45340
Salt Lake City, Utah 84145

File

In re: Preston Collet Regehr,
Petitioner.

No. 910338

We remand to the Bar for the purpose of determining whether Osgoode School of Law is substantially equivalent to an ABA approved law school. Thereafter, the Court will consider further the merits of the petition.

Geoffrey J. Butler
Clerk

May 27, 1999

Messenger-Enterprise

Not certified as lawyer

To the Editor:

Pursuant to your rent article on Mr. Benton L. Peterson, the Utah State Bar, the organization charged with regulating the practice of law in Utah, would like to respond as follows:

1. No one is legally permitted to practice law in Utah without graduating from an American Bar Association approved law school, taking and passing the Bar Examination and being duly admitted by the Utah Supreme Court. Mr. Peterson has no record of these things.

2. A juris doctorate degree in law is merely an academic achievement and does not confer the right to practice law in Utah just as those who are awarded medical degrees are not permitted to practice medicine without passing the required examinations and being licensed to do so.

3. Monticello University (the institution from which Mr. Peterson claims to have graduated) is not an ABA approved law school. In fact, the Bar can find no information on Monticello University.

4. An "attorney-in-fact" ("power of attorney") is a legal term indicating that an individual is authorized y another individual to act in a person's place for the transaction of business or a particular act that is not of a legal nature. **Attorneys-in-fact are not permitted to**

legally advise or counsel others, file pleadings or represent third parties in legal matters.

Mr. Peterson is not qualified nor is he authorized to practice law in the State of Utah and nothing has changed since the 1997 case **Utah State Bar v. Benton Peterson.** In that matter, the Utah Supreme Court upheld the trial court's finding that Mr. Peterson had been unlawfully engaging in te practice of law.

Katherine A. Fox
General Counsel
Utah State Bar

S.B. 13
REPEAL OF ATTORNEYS AND COUNSELORS PROVISIONS
2001 GENERAL SESSION
STATE OF UTAH
Sponsor: Terry R. Spencer
(passed 1/24/01)
(effective 4/30/01)
(Gov. Signed 2/8/01)

This act modifies the Judicial Code by repealing Chapter 51, Attorneys and Counselors, and moving two of te sections from that chapter to other parts of the code.

78-51-10. Admission to practice law – Qualifications – Enrollment – Oath – Fees.

> The board of commissioners shall have the power to determine the qualifications and requirements for admission to the practice of law, and to conduct examinations of applicants; and it shall from time to time certify to the Supreme Court those applicants found to be qualified; provided, that the qualifications and requirements for admission to the practice of law shall be as follows: each applicant shall be a citizen of the United States or a person who has a bona fide intention to become one in a manner required by law, of the age of twenty-one years, of good moral character, and must produce satisfactory testimonial of good moral character; have had a preliminary education other than legal and have regularly and attentively studied law for a period of at least three years; and

have passed a satisfactory examination upon the principles of common law, equity, criminal law and the statutes and practice of this state; provided that until the 1st day of July, 1932, no examination for admission to practice shall be required of regular graduates of the law school of the University of Utah. The approval by the Supreme Court of any person so certified shall entitle him to be enrolled in the bar of this state upon his taking an oath to support the Constitution of the United States and of this state and to faithfully discharge the duties of an attorney and counselor to the best of his knowledge and ability, and the payment of the fee provided by law, and thereafter to practice law upon payment of the license fees herein provided, subject to the provisions of this title.

History: L. 1931, ch. 48, § 10; R.S. 1933 & C. 1943, 6-0-10.

TABLE OF U.S. SUPREME COURT JUSTICES

(*The Supreme Court at Work*, Congressional Quarterly (ed. 1990))

Name	Education	
	Law School Graduate	Other (incl. nongrad. & honorary degrees)
John Jay		Privately tutored; attended boarding school; graduated King's College (later Columbia University), 1764; clerked in law office of Benjamin Kissam; admitted to the bar in 1768
John Rutledge		Privately tutored; studied law at Middle Temple in England; called to the English bar in 1760
William Cushing		Graduated Harvard, 1751, honorary LL.D., 1785; honorary A.M., Yale, 1753; studied law under Jeremiah

	Gridley; admitted to the bar in 1755
James Wilson	Attended University of St. Andrews (Scotland); read law in office of John Dickinson; admitted to the bar in 1767; honorary A.M., College of Philadelphia, 1776, honorary LL.D., 1790
John Blair, Jr.	Graduated with honors from College of William and Mary, 1754; studied law at Middle Temple, London, 1755-1756
James Iredell	Educated in England; read law under Samuel Johnston of North Carolina; licensed to practice, 1770-1771
Thomas Johnson	Educated at home; studied law under Stephen Bordley;

	admitted to the bar, 1760
William Paterson	Graduated from College of New Jersey (Princeton), 1763; M.A., 1766; studied law under Richard Stockton; admitted to the bar, 1769
Samuel Chase	Tutored by father; studied law in Annapolis law office; admitted to bar in 1761
Oliver Ellsworth	B.A. Princeton, 1766; honorary LL.D., Yale (1790), Princeton (1790), Dartmouth (1797)
Bushrod Washington	Privately tutored; graduated College of William and Mary, 1778; read law under James Wilson; member, Virginia bar; honorary LL.D. degrees from Harvard, Princeton,

	and University of Pennsylvania
Alfred Moore	Educated in Boston; studied law under his father; received law license, 1775
John Marshall	Tutored at home; self-taught in law; attended one course of law lectures at College of William and Mary, 1780; member, Phi Beta Kappa
William Johnson	Graduated Princeton, 1790; studied law under Charles Cotesworth Princkney; admitted to bar in 1793
Henry Blockholst Livingston	Graduated from College of New Jersey (Princeton), 1774; honorary LL.D., Harvard (1810), Princeton; studied law under Peter Yates; admitted to bar in 1783

Thomas Todd	Graduated from Liberty Hall (now Washington and Lee University), Lexington, Virginia, 1783; read law under Harry Innes; admitted to bar in 1788
Joseph Story*	Attended Marblehead Academy; graduated from Harvard, 1798; LL.D., 1821; read law under Samuel Sewall and Samuel Putman; admitted to bar, 1801

* Apparently doing both law school and private study

Gabriel Duvall	Classical preparatory school; studied law
Smith Thompson	Graduated Princeton, 1788; read law under James Kent; admitted to the bar, 1792; honorary law doctorates from Yale, 1824; Princeton, 1824; and Harvard, 1835
Robert Trimble	Bourbon Academy; Kentucky Academy;

	read law under George Nicholas and James Brown; admitted to the bar in 1803
John McLean	Attended local school; privately tutored; read law in office of Arthur St. Clair, Jr.
Henry Baldwin*	Hopkins Grammar School, 1793; Yale College, 1797, LL.D., 1830; studied law under Alexander J. Dallas

* Apparently doing both law school and private study

James Moore Wayne	Princeton University, 1808, honorary LL.B, 1849; read law under three lawyers including Judge Charles Chauncey of New Haven
Roger Brooke Taney	Graduated from Dickinson College in Pennsylvania, 1795, honorary LL.D.; read law in office of Judge Jeremiah

	Chase in Annapolis
Philip Pendleton Bourbon	Read law on his own; attended one session at College of William and Mary, 1801
John Catron	Self-educated
John McKinley	Read law on his own; admitted to the bar in 1800
Peter Vivian Daniel	Attended Princeton University, 1802-1803
Samuel Nelson	Gradu[illegible], Mi[illegible]bury College, 18[illegible]3
Levi Woodbury	Dartmouth College, graduated with honors, 1809; Tapping Reeve Law School, circa 1810
Robert Cooper Grier	Dickinson College, graduated 1812
Benjamin Robbins Curtis	Harvard University; graduated 1829 with highest honors;

	Harvard Law School, graduated 1832
John Archibald Campbell	Franklin College (now the University Georgia), graduated with first honors, 1825; attended U.S. Military Academy at West Point, 1825-1828
Nathan Clifford	Studied law in office of Josiah Quincy in Rumney; admitted to New Hampshire bar, 1827
Noah Haynes Swayne	Studied law privately; admitted to the bar in Warrenton, Virginia, in 1823
Samuel Freeman Miller	Transylvania University, M.D., 1838; studied law privately; admitted to the bar in 1847
David Davis	Graduated Kenyon College, 1882; Yale Law School, 1835

Stephen Johnson Field	Graduated Williams College, 1837; class valedictorian; studied law in private firms; admitted to the bar in 1841
Salmon Portland Chase	Dartmouth College, 1826
William Strong	Yale College, B.A., 1828; M.A., 1831
Joseph P. Bradley	Rutgers University, graduated 1836
Ward Hunt	Graduated with honors from Union College, 1828
Morrison Remick Waite	Graduated from Yale College, 1837
John Marshall Harlan	Centre College, A.B., 1850; studied law at Transylvania University, 1851-1853
William Burnham Woods	Attended Western Reserve College for three years; graduated from Yale

	University, 1845
Stanley Matthews	Kenyon College, A.B., 1840
Horace Gray	Harvard College, A.B., 1845; Harvard Law School, 1849
Samuel Blatchford	Columbia College, A.B., 1837
Lucius Quintus Cincinnatus Lamar	Emory College, A.B, 1845
Melville Weston Fuller	Bowdoin College, A.B, 1853; studied law at Harvard Law School and read law, 1853-1855
David Josiah Brewer	Wesleyan University, 1852-1853; Yale University, A.B., 1856; Albany Law School, LL.B., 1858
Henry Billings Brown	Yale University, A.B., 1856; studied briefly at Yale Law School and Harvard Law School
George Shiras, Jr.	Ohio University,

	1849-1851; Yale University, B.A., 1853; honorary LL.D., 1883; studied law at Yale and privately; admitted to the bar in 1855
Howell Edmunds Jackson	West Tennessee College, A.B., 1849; University of Virginia, 1851-1852; Cumberland University, 1856
Edward Douglass White	Mount St. Mary's College, Emmitsburg, Maryland, 1856; Georgetown College, Washington, D.C.; 1857-1861; studied law under Edward Bermudez; admitted to the bar in 1866
Rufus Wheeler Peckman	Albany Boy's Academy; studied privately in Philadelphia
Joseph McKenna	Benicia Collegiate Institute, graduated

	in 1865; admitted to the bar in 1866
Oliver Wendell Holmes, Jr.	Harvard College, A.B., 1861; LL.B., 1866
William Rufus Day	University of Michigan, A.B., 1870; University of Michigan Law School, 1871-1872
William Henry Moody	Harvard University, A.B., cum laude, 1876; Harvard University Law School, 1876-1877
Horace Harmon Lurton	University of Chicago, 1860; Cumberland Law School, L.B., 1867
Charles Evans Hughes	Colgate University, 1876-1878; Brown University, A.B., 1881, A.M., 1884; Columbia Law School, LL.B., 1884
Willis Van Devanter	Indiana Asbury University, A.B., 1878; University of Cincinnati Law School, LL.B., 1881

Joseph Rucker Lamar	University of Georgia, 1874-1875; Bethany College, A.B., 1877; Washington and Lee University, 1877
Mahlon Pitney	College of New Jersey, (Princeton), A.B., 1879; A.M., 1882
James Clark McReynolds	Vanderbilt University, B.S., class valedictorian, 1882; University of Virginia, LL.B., 1884
Louis Dembitz Brandeis	Harvard Law School, LL.B. 1877
John Hessin Clarke	Western Reserve University, A.B., 1877, A.M., 1880; LL.D., 1916
William Howard Taft	Yale University, A.B., class salutatorian, 1878; Cincinnati Law School, LL.B., 1880
George Sutherland	Brigham Young Academy, 1878-1881; University of Michigan Law School, 1883

Pierce Butler	Carleton College, A.B., B.S. 1887; LL.D., 1923
Edward Terry Sanford	University of Tennessee, B.A. and Ph.D., 1883; Harvard, B.A., 1884, M.A., 1889; Harvard Law School, LL.B., 1889; editor of the *Harvard Law Review*
Harlan Fiske Stone	Amherst College, A.B., 1894, A.M., 1897, LL.D., 1913; Columbia University, LL.B. 1898
Owen Josephus Roberts	University of Pennsylvania A.B., Phi Beta Kappa, 1895; LL.B. cum laude, 1898
Benjamin Nathan Cardoza	Columbia University, A.B., 1889; A.M., 1890; Columbia Law School, 1891, no degree
Hugoe Lafayette Black	Birmingham Medical College, 1903-1904; University of Alabama, LL.B., 1906
Stanley Forman Reed	Kentucky Wesleyan University A.B., 1906; legal studies,

	University of Virginia and Columbia University (no degree); graduate of studies, University of Paris, 1909-1910
Felix Frankfurter	College of the City of New York, A.B., 1902; Harvard Law School, LL.B., 1906
William Orville Douglas	Whitman College, B.A., 1920, Phi Beta Kappa; Columbia Law School, LL.B., 1925
Francis William Murphy	University of Michigan A.B., 1912, LL.B., 1914; graduate study, Lincoln's Inn, London, and Trinity College, Dublin
James Francis Byrnes	St. Patrick's Parochial School (never graduated), studied law privately; admitted to the bar in 1903
Robert Houghwout Jackson	Local schools in Frewsburg, New York; Albany Law School, 1912

Wiley Blount Rutledge	University of Wisconsin, A.B., 1914; University of Colorado, LL.B. 1922
Harold Hitz Burton	Bowdoin College, A.B., 1909; Harvard University, LL.B. 1912
Frederick Moore Vinson	Centre College, A.B., 1909; LL.B., 1911
Tom Campbell Clark	University of Texas, A.B., 1921; LL.B., 1922
Sherman Minton	Indiana University, LL.B., 1915; Yale University, LL.M., 1917
Earl Warren	University of California, B.L., 1912; J.D., 1914
John Marshall Harlan	Princeton University, B.A, 1920; Rhodes Scholar, Oxford University, Balliol College, B.A. in jurisprudence, 1923; New York Law School, LL.B., 1925
William Joseph Brennan, Jr.	University of Pennsylvania, B.S., 1928; Harvard Law School, LL.B., 1931

Charles Evans Whittaker	University of Kansas Law School, LL.B., 1924
Potter Stewart	Yale University, B.A., cum laude, 1937, Yale Law School, LL.B., 1941; fellow, Cambridge University, Cambridge, England, 1937-1938
Byron Raymond White	University of Colorado, B.A., Phi Beta Kappa, 1938; Rhodes Scholar, Oxford University, 1939; Yale Law School, LL.B., magna cum laude, 1946
Arthur Joseph Goldberg	Northwestern University, B.S.L., 1929; J.D., summa cum laude, 1930
Abe Fortas	Southwestern College, A.B., 1930; Yale Law School, LL.B., 1933
Thurgood Marshall	Lincoln University, A.B., cum laude, 1930; Howard University Law School, LL.B., 1933
Warren Earl Burger	Attended the University of Minnesota, 1925-1927; St. Paul College of Law (now

	Mitchell College of Law), LL.B., magna cum laude, 1931
Harry Andrew Blackmun	Harvard University, B.A., Phi Beta Kappa, summa cum laude in mathematics, 1929; Harvard Law School, LL.B. 1932
Lewis Franklin Powell	Washington and Lee University B.S., Phi Beta Kappa, 1929; Washington and Lee University Law School, LL.B., 1931; Harvard Law School, LL.M., 1932
William Hubbs Renquist	Stanford University, B.A., 1948, M.A., 1948; Harvard University Law School, LL.B., 1952
John Paul Stevens	University of Chicago, B.A., Phi Beta Kappa, 1941; Northwestern University School of Law, J.D., magna cum laude, 1947
Sandra Day O'Connor	Stanford College, B.A., 1950, Stanford University Law School, LL.B., 1952

Antonin Scalia	Georgetown University, A.B. 1957; Harvard Law School, LL.B., 1960
Anthony McLeod Kennedy	Stanford University, A.B., 1958; London School of Economics, 1957-1958; Harvard Law School, LL.B., 1961
David Hackett Souter	Harvard College, A.B., Rhodes Scholar, A.B. in jurisprudence Magdalen College, Oxford, M.A., 1989; Harvard Law School, LL.B.
Clarence Thomas	Attended Conception Seminary; graduated Holy Cross College, A.B., cum laude; Yale Law School, J.D., 1974
Ruth Bader Ginsburg	Graduated Cornell University, B.A.; attended Harvard Law School, and graduated Columbia Law School, LL.B.
Steven G. Breyer	Stanford University, A.B., Magdalen College, Oxford, B.A.; Harvard Law School, LL.B

GLOSSARY

arbitrary.
Means in an "arbitrary" manner, as fixed or done capriciously or at pleasure; without adequate determining principle; not founded in the nature of things; nonrational; not done or acting according to reason or judgment; depending on the will alone; absolutely in power; capriciously; tyrannical; despotic; Corneil v. Swisher County, Tex.Civ.App., 78 S.W.2d 1072. 1074. Without fair, solid, and substantial cause; that is, without cause based upon the law. U.S. v.s Lotempio, D.C.N.Y., 58 F.2d 358, 359; not governed by any fixed rules or standards. People ex rel. Hultman v. Gilchrist, 188 N.Y.S. 61, 65, 114 Misc. 651. ***Black's Law Dictionary*, (rev. 4th ed. 1968)**

(är´bi trer´ē), *adj.*, n., pl. –adj. **1.** subject to individual will or judgment without restriction; contingent solely upon one's discretion; *an arbitrary decision.* **2.** decided by a judge or arbiter rather than by a law or statute. **3.** having unlimited power; uncontrolled or unrestricted by law; despotic; tyrannical: *an arbitrary government.* **4.** capricious; unreasonable; unsupported: *an arbitrary demand for payment.* **5.** *Math.* undetermined; not assigned a specific value: *an arbitrary constant.*
Webster's Encyclopedic Unabridged Dictionary of the English Language, (2nd ed. 1996)

Attorney.
In the most general sense this term denotes an agent or substitute, or one who is appointed and authorized to act in the place or stead of another. Nardi v. Poinsatte, D.C.Ind.,

46 F.2d 347, 348. An agent, or one acting on behalf of another. Sherts v. Fulton Nat. Bank of Lancaster, 342 Pa. 337, 21 A.2d 18.

One who is put in place, stead, and turn of another to manage his matters of law. Kaufman v. Jurczak, 102 N.J.Eq. 66, 139 A. 716. An agent employed by party to case to manage it for him. McLyman v. Miller, 52 R.I. 374, 161 A. 111, 112. ***Black's Law Dictionary*, (rev. 4th ed. 1968)**

(ə tûr′nē), *n., pl.* **–neys. 1.** a lawyer; attorney-at-law. **2.** an attorney-in-fact; agent. *Id.*, at 134. **Webster's Encyclopedic Unabridged Dictionary of the English Language, (2nd ed. 1996)**

Attorney-at-Law. An advocate, counsel, or official agent employed in preparing, managing, and trying cases in the courts. An officer in a court of justice, who is employed by a party in a cause to manage it for him. In re Bergeron, 220 Mass. 472, 107, N.E. 1007, 1008, Ann.Cas. 1917A, 549. ***Black's Law Dictionary*, (rev. 4th ed. 1968)**

(ə tûr′nē ət lô), *n., pl.* **attorneys-at-law.** *Law.* An officer of the court authorized to appear before its as a representative of a party to a legal controversy. **Webster's Encyclopedic Unabridged Dictionary of the English Language, (2nd ed. 1996)**

Authorize.
To empower; to give a right or authority to act. Board of

Com'rs of Sedgwick County v. Toland, 121 Kan. 109, 245 P. 1019, 1021. To clothe with authority, warrant, or legal power. Arkansas & Memphis Ry. Bridge & Terminal Co. v. State, 174 Ark. 420, 295 S.W. 378, 380. To permit a thing to be done in the future. Gray v. Gill, 210 N.Y.S. 658, 660, 125 Misc. 70. It has a mandatory effect or meaning, implying a direction to act. Quality Building & Securities Co. v. Bledroe, 125 Cal.App. 493, 14 P.2d 128, 132. ***Black's Law Dictionary*, (rev. 4th ed. 1968)**

(ô′thə rīz′), *v.t.* **-rized, -izing. 1.** to give authority or official power to; empower: *to authorize an employee to sign purchase orders.* **2.** to give authority for: formally sanction (an act or proceeding): *Congress authorized the new tax on tobacco.* **3.** to establish by authority or usage: *an arrangement long authorized by etiquette books.* **4.** to afford a ground for: warrant; justify. **Webster's Encyclopedic Unabridged Dictionary of the English Language, (2nd ed. 1996)**

Civil Liberty.
The liberty of a member of society, being a man's natural liberty, so far restrained by human laws (and no further) as is necessary and expedient for the general advantage of the public. 1 B..Comm. 125; 2 Steph. 487. ***Black's Law Dictionary*, (rev. 4th ed. 1968)**

Educate.
To give proper moral, as well as intellectual and physical, instruction. See Williams v. MacDougall, 39 Cal. 80; Peck v. Claflin, 105 Mass. 420. To prepare and fit oneself

for any calling or business, or for activity and usefulness in life. In re Wolfe's Estate, 299 N.Y.S. 99, 102, 164 Misc. 504. ***Black's Law Dictionary*, (rev. 4th ed. 1968)**

(ej′oo kat′), *v.* **-cat•ed, -cat•ing. 1.** to develop the faculties and powers of (a person) by teaching, instruction, or schooling. **2.** to qualify by instruction or training for a particular calling, practice, etc.; train: *to educate someone for law.* **3.** to provide schooling or training for; send to school. **4.** to develop or train (the ear, taste, etc.): *to educate one's palate to appreciate fine food.* **5.** to inform: *to educate oneself about the best course of action.* *–v.i.* **6.** to educate a person or group: *A television program that educates can also entertain.* ***Webster's Encyclopedic Unabridged Dictionary of the English Language*, (2nd ed. 1996)**

Engage.
To employ or involve one's self; to take part in; to embark on. State ex rel. Kusie v. Weber, 72 N.D. 705, 10 N.W.2d 741, 745. It imports more than a single act or transaction or an occasional participation. Head v. New York Life Ins. Co. C.C.A.Okl., 43 F.2d. 517, 519; Lee v. Guardian Life Ins. Of America, 46 N.Y.S.2d 241, 246, 187 Misc. 221. ***Black's Law Dictionary*, (rev. 4th ed. 1968)**

(en gāj′), *v.* *–v.t.* **1.** to occupy the attention or efforts of (a person or persons): *He engaged her in conversation.* **2.** to secure for aid, employment, use, etc.; hire: *to engage a worker; to engage a room.* **3.** to attract and hold fast: *The novel engaged her attention and interest.* **4.** to attract or please: *His good nature engages everyone.* **5.** to bind, as by pledge, promise, contract, or oath; make liable: *He*

engaged himself to repay his debt within a month. **6.** to betroth (usually used in the passive): *They were engaged last week.* **7.** to bring (troops) into conflict; enter into conflict with: *Our army engaged the enemy.* **8.** *Mech.* to cause (gears or the like) to become interlocked; interlock with. **9.** to attach or secure. **10.** *Obs.* to entangle or involve. –*v.i.* **11.** to occupy oneself; become involved: *to engage in business or politics.* **12.** to take employment: *She engaged in her mother's business.* **13.** to pledge one's word; assume an obligation: *I was unwilling to engage on such terms.* **14.** to cross weapons; enter into conflict: *The armies engaged early in the morning.* **15.** *Mech.* (of gears or the like) to interlock. ***Webster's Encyclopedic Unabridged Dictionary of the English Language*, (2nd ed. 1996)**

Expositor. (ik spoz′ i tər), *n.* a person who expounds or gives an exposition. ***Webster's Encyclopedic Unabridged Dictionary of the English Language*, (2nd ed. 1996)**

Law of the Land.
Due process of law (*q.v.*). By the law of the land is most clearly intended by the general law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial. Dupuy v. Tedora, 204 La. 560, 15 So.2d 886, 891. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of general rules which govern society. Rich Hill Coal Co. v. Brashore, 334 Pa. 449, 7 A.2d 302, 316; In re Stobie's Estate, 30 Cal.App.2d 525, 86 P.2d 883, 885. ***Black's Law Dictionary*, (rev. 4th ed. 1968)**

Lawful.

Legal; warranted or authorized by the law; having the qualifications prescribed by law; not contrary to nor forbidden by the law. Ohio Automatic Sprinler Co. v. Fender, 108 Ohio St. 149, 141 N.E. 269, 275; McDonnell v., Murnan Shipbuilding Corporation, 210 Ala. 611, 98 So. 887, 889; Hafner Mfg. Co. v. City of St. Louis, 262 Mo. 621, 172 S.W. 28, 33. ***Black's Law Dictionary*, (rev. 4th ed. 1968)**

(lô′fəl), *adj.* **1.** allowed or permitted by law; not contrary to law: *a lawful enterprise.* **2.** recognized or sanctioned by law; legitimate: *a lawful marriage; a lawful heir.* **3.** appointed or recognized by law; legally qualified: *a lawful king.* **4.** acting or living according to the law; law-abiding: *a lawful man; a lawful community.* ***Webster's Encyclopedic Unabridged Dictionary of the English Language*, (2nd ed. 1996)**

Lawyer.
A person learned in the law; as an attorney, counsel, or solicitor; a person licensed to practice law. ***Black's Law Dictionary*, (rev. 4th ed. 1968)**

(lô′yər, loi′yər), *n.* **1.** A person whose profession is to represent clients in a court of law or to advise or act for clients in other legal matters. **2.** *New Testament.* an interpreter of Mosaic Law Luke 14:3. *–v.i.* **3.** to work as a lawyer; practice law. *–v.t.* **4.** to submit (a case, document, or the like) to a lawyer for examination, advice, clarification, etc. ***Webster's Encyclopedic Unabridged Dictionary of the English Language*, (2nd ed. 1996)**

Liberty.

Freedom; exemption from extraneous control. ***Black's Law Dictionary*, (rev. 4th ed. 1968)**

(lib′ər tē), *n., pl.* –adj. **1.** freedom from arbitrary or despotic government or control. **2.** freedom from external or foreign rule; independence. **3.** freedom from control, interference, obligation, restriction, hampering conditions, etc.; power or right of doing, thinking, speaking, etc., according to choice. **4.** freedom from captivity, confinement, physical restraint: *the prisoner soon regained his liberty.* **5.** permission granted to a sailor, esp. in the navy, to go ashore. **6.** freedom or right to frequent or use a place: *the visitors were given the liberty of the city.* **7.** unwarranted or impertinent freedom in action or speech, or a form or instance of it: *to take liberties.* **8.** A female figure personifying freedom from despotism. ***Webster's Encyclopedic Unabridged Dictionary of the English Language*, (2nd ed. 1996)**

Natural.
The juristic meaning of this term does not differ from the vernacular, except in the cases where it is used in opposition to the term "legal;" and then it means proceeding from or determined by physical causes or conditions, as distinguished from positive enactments of law, or attributable to the nature of man rather than to the commands of law, or based upon moral rather than legal considerations or sanctions. ***Black's Law Dictionary*, (rev. 4th ed. 1968)**

(nach′ ər əl, nach′ rəl), *adj.* **1.** Existing in or formed by nature (opposed to artificial): *a natural bridge.* **2.** based on the state of things in nature; constituted by nature:

Growth is a natural process. **3.** of or pertaining to nature or the universe: *natural beauty.* **4.** of, pertaining to, or occupied with the study of natural science: *conducting natural experiments.* **5.** in a state of nature; uncultivated, as land. 6. growing spontaneously, without being planted or tended by human hand, as vegetation. **7.** having undergone little or no processing and containing no chemical additives: *natural food; natural ingredients.* Cf. **organic.** (def. 11) **8.** Having a real or physical existence, as opposed to one that is spiritual, intellectual, fictitious, etc. **9.** of, pertaining to, or proper to the nature or essential constitution: *natural ability.* **10.** Proper to the circumstances of the case: *a natural result of his greed.* **11.** free from affectation or constraint: *a natural manner.* **12.** arising easily or spontaneously: *a natural courtesy to strangers.* **13.** consonant with the nature or character of. **14.** in accordance with the nature of things: *It was natural that he should hit back.* **15.** based upon the innate moral feeling of humankind: *natural justice.* **16.** in conformity with the ordinary course of nature; not unusual or exceptional. **17.** happening in ordinary or usual course of things, without the intervention of accident, violence, etc. **18.** related only by birth: of no legal relationship; illegitimate: *a natural son.* **19.** related by blood rather than by adoption. **20.** based upon what is learned from nature rather than on revelation. **21.** true to or closely imitating nature: *a natural representative.* **22.** unenlightened or unregenerated: *the natural man.* **23.** Being such by nature; burn such: *a natural fool.* **24.** *Music.* **a.** neither sharp nor flat. **b.** changed in pitch by the sign ♮. **25.** not treated, tanned, refined, etc.; in its original or raw state: *natural wood; natural cowhide.* **26.** (of a horn or trumpet) having neither side holes nor valves. **27.**

not tinted or colored; undyed. **28.** having a pale tannish or grayish-yellow color, as many woods and animal skins. **29.** *Cards.* **a.** being a card other a wild card or joker. **b.** (of a set of sequence of cards) containing no wild cards. **30.** having or showing feelings, as affection, gratitude, or kindness, considered part of basic human nature. **31.** Afro (def. 1) *–n.* **32.** any person or thing that is or is likely or certain to be very suitable to and successful in an endeavor without much training or difficulty. **33.** *Music.* **a.** a white key on a piano, organ, or the like. **b.** The sign ♮, placed before a note, canceling the effect of a previous sharp or flat. **c.** a note affected by a ♮, or a tone thus represented. **34.** an idiot. **35.** *Cards.* blackjack (def. 2b). **36.** Afro (def. 2) (in craps) winning combination of seven or eleven made on first cast. **38.** a natural substance or a product made with such a substance: *an ointment containing mink oil and other naturals.* ***Webster's Encyclopedic Unabridged Dictionary of the English Language*, (2nd ed. 1996)**

Paralegal.
A person who performs substantive legal work or provides advice to a client with the supervision of a lawyer or for which a lawyer is accountable. Paralegals are employed or retained by lawyers, law firms, governmental agencies, corporate law departments and other entities. ***Nonlawyer Activity in Law-Related Situations*, American Bar Association, Executive Summary (Aug. 1995).**

Practice.
Repeated or customary action; habitual performance; a succession of acts of similar kind; habit; custom; usage; application of science to the wants of men; the exercise of

any profession. Marker v. Cleveland, 212 Mo.App. 467, 252 S.W. 95, 96; Columbia Life Ins. Co. v. Tousey, 152 Ky. 447, 153 S.W. 767, 768. ***Black's Law Dictionary*, (rev. 4th ed. 1968)**

(prak´ tis), *n., v.* *–n.* **1.** habitual or customary performance; operation: *office practice.* **2.** habit; custom: *It is not the practice here for men to wear long hair.* **3.** repeated performance or systematic exercise for the purpose of acquiring skill or proficiency: *Practice makes perfect.* **4.** condition arrived at be experience or exercise: *She refused to play the piano, because she was out of practice.* **5.** the action or process of performing or doing something: *to put a scheme into practice; the shameful practices of a blackmailer.* **6.** the exercise or pursuit of a profession or occupation, esp. law or medicine: *She plans to set of a practice in her hometown.* **7.** the business of a professional person: *The doctor wanted his daughter to take over his practice when he retired.* **8.** *Law.* the established method of conducting legal proceedings. **9.** *Archaic.* plotting; intrigue; trickery. **10.** Usually, **practices.** *Archaic.* intrigues; plots. *–v.t.* **11.** The perform or do habitually or usually: *to practice a strict regimen.* **12.** to follow or observe habitually or customary: *to practice one's religion.* **13.** to exercise or pursue as a profession, art, or occupation: *to practice law.* **14.** to perform or do repeatedly in order to acquire skill and proficiency: *to practice the violin.* **15.** to train or drill (a person, animal, etc.) in something in order to give it proficiency. *–v.i.* **16.** to do something habitually or as a practice. **17.** to pursue a profession, esp. law or medicine. **18.** to exercise oneself by repeated performance in order to acquire skill: *to practice at shooting.* **19.** *Archaic.* to plot

or conspire. ***Webster's Encyclopedic Unabridged Dictionary of the English Language*, (2nd ed. 1996)**

Practice of Law.
Not limited to appearing in court, or advising and assisting in the conduct of litigation, but embracing the preparation of pleadings, and other papers incident to actions and special proceedings, conveyances, the preparation of legal instruments of all kinds, and the giving of all legal advice to clients. State v. Chamberlain, 132 Wash. 520, 232 P. 337, 338. It embraces all advice to clients and all actions taken for them in matters connected with the law. Rhode Island Bar Ass'n v. Lesser, 68 R.I. 14, 26 A.2d 6, 7.
***Black's Law Dictionary*, (rev. 4th ed. 1968)**

Property.
That which is peculiar or proper to any person; that which belongs exclusively to one; in the strict legal sense, an aggregate of rights which are guaranteed and protected by the government. Fulton Light, Heat, & Power Co. v. State, 65 Misc.Rep. 263, 121 N.Y.S. 536. The term is said to extend to every species of valuable right and interest. McAlister v. Prichard, 230 S.W. 66, 67, 287 Mo. 494. More specifically, ownership; the unrestricted and exclusive right to a thing; the right to dispose of a thing in every legal way, to possess it, to use it, and to exclude every one else from interfering with it. Mackeld. Rom. Law, § 265. That dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects. Transcontinental Oil Co. v. Emmerson, 298 Ill. 394, 131 N.E.645, 647 16 A.L.R. 507. The exclusive right of possession, enjoying, and disposing of a thing. Barnes v. Jones, 139 Miss. 675, 103 So. 773,

775, 43 A.L.R. 673; Tatum Bros. Real Estate & Investment Co. v. Watson, 92 Fla. 278, 109 So. 623, 626. The highest right a man can have to anything; being used for that right which one has to lands or tenements, goods, or chattels, which no way depends on another man's courtesy. Jackson ex dem. Pearson v. Housel, 17 Johns. 281, 283. ***Black's Law Dictionary*, (rev. 4th ed. 1968)**

(prop´ər tē), *n., pl.* **1.** that which a person owns; the possession or possessions of a particular owner: *They lost all their property in the fire.* **2.** goods, land, etc., considered as possessions: *The corporation is a means for the common ownership of property.* **3.** a piece of land or real estate: *property on Main Street.* **4.** ownership; right of possession, enjoyment, or disposal of anything, esp. of something tangible: *to have property.* **5.** something at the disposal of a person, a group of persons, or the community or public: *The secret of the invention become common property.* **6.** an essential or distinctive attribute or quality of a thing: *the chemical and physical properties of an element.* **7.** *Logic.* **a.** any attribute or characteristic. **b.** (in Aristotelian logic) an attribute not essential to a species but always connected with it and with it alone. **8.** Also called **prop**. A usually movable item, other than costumes or scenery, used on the set of a theater production, motion picture, etc., any object handled or used by an actor in a performance. **9.** A written work, play, movie, etc., bought or optioned for commercial production or distribution. **10.** A person, esp. one under contract in entertainment or sports, regarded as having commercial value: *an actor who was a hot property at the time.* ***Webster's Encyclopedic Unabridged Dictionary of the English Language*, (2nd ed. 1996)**

Supreme Court U.S.
FILED
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No. 01-1115

In The

Supreme Court of the United States

JASON "K" JENSEN,

Petitioner,

v.

THE STATE OF UTAH, UTAH STATE SUPREME COURT, UTAH STATE LEGISLATURE, and UTAH STATE BAR,

Respondents.

On Petition For Writ Of Certiorari To The Utah Supreme Court

BRIEF OF UTAH STATE BAR IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Page

Table of Authorities iii

Statement of the Case 1

Summary of Argument 1

I. Argument 2

A. Legal Framework of Bar Admission 2

B. Certiorari Should Not Be Granted..... 3

1. Introduction 3

2. Separation of Powers Should Not Receive Review..... 4

3. The Utah State Bar Relationship With The Utah Supreme Court Does Not Merit Review 5

4. Petitioner Has No Right To Sit For The Utah State Bar Examination Absent Full Qualification..... 6

5. No Due Process Issue Exists For Review 8

II. Conclusion 11

Appendix

Utah Supreme Court Order Amending Rules for Integration and Management of the Utah State Bar, Case no. 15436-A (May 27, 1993).....App. 1

TABLE OF CONTENTS – Continued

Page

Rules Governing Admission to the Utah State Bar.....App. 6

Utah Constitution, Art. XXIII, § 1.....App. 32

TABLE OF AUTHORITIES

Page

CASES

Bailey v. Utah State Bar, 846 P.2d 1278 (Utah 1993) 5

Black v. Clegg, 938 P.2d 293 (Utah 1997) 5

Braxton v. U.S., 500 U.S. 344 (1991) 3

Cafeteria and Restaurant Workers Union Local 473, AFL-CIO) v. McElroy, 367 U.S. 886 (1961)..... 10

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) 7

Goldfarb v. Virginia State Bar, 421 U.S. 773, (1975) 7

Goldsmith v. U.S. Board of Tax Appeals, D.C., 270 U.S. 117 (1926) 10

Hoover v. Ronwin, 466 U.S. 558 (1984) 7

In re: Integration in Governance of the Utah State Bar, 632 P.2d 845 (Utah 1981) 2

Pendleton v. Utah State Bar, 16 P.3d 1230 (Utah 2000)..... 5

Petition of Randolph-Seng, 669 P.2d 400 (Utah 1983) 3

Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232, (1957)..... 6

Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963) 9

CONSTITUTION

Utah Constitution, Article VIII, Section 4..... 2

Utah Constitution, Article XXIII, Section 1 4

STATEMENT OF THE CASE

Petitioner's statement of the case weaves a fairly complicated picture for what is actually a very simple case. The Utah Supreme Court solely determines admission to the practice of law in Utah. The Utah Supreme Court requires an applicant to be a graduate of an American Bar Association (ABA) approved law school. The petitioner, Mr. Jensen, has not graduated from any law school so the Utah Supreme Court has refused to consider his application. Rather than qualifying for admission to the Utah State Bar by attending a law school, petitioner seeks here to have this court apparently force the Utah Supreme Court to allow petitioner to take the Utah State Bar examination and be admitted to practice law in Utah.

The word "apparently" is used in the foregoing paragraph because a close reading of the petition for certiorari shows that no specific relief is requested so respondent is left to derive from the argument made what relief petitioner seeks from this court.

SUMMARY OF ARGUMENT

This brief shows that petitioner presents no significant issue for this Court to grant certiorari. Petitioner is a person unqualified to practice law according to the Rules of Admission of the Utah Supreme Court. The law recognizes that reasonable conditions for admission to the practice of law may be imposed.

Petitioner fails to draw in constitutional principles that would invoke review by certiorari. The Utah

Supreme Court considered his petition for an exception to the Rules of Admission and denied it without denying him any right of due process.

The petition for certiorari should be denied.

I. ARGUMENT

A. Legal Framework of Bar Admission

An understanding of the legal framework for admission to the Utah State Bar helps to focus the petitioner's claims. The foundation of the legal framework is found in the Utah Constitution at Article VIII, Section 4, wherein it states:

> The Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.

The Utah Supreme Court, in turn, uses the Utah State Bar to conduct the process of admission to the Bar. The Utah State Bar has the status of an "integrated bar". *See In re: Integration in Governance of the Utah State Bar*, 632 P.2d 845 (Utah 1981). Utah Supreme Court Order Amending Rules for Integration and Management of the Utah State Bar, Case No. 15436-A (May 27, 1993) requires that all rules governing admission to the Utah State Bar be approved by the Utah Supreme Court. App. 1.

The Utah State Bar carries out the duties of assisting the Utah Supreme Court in admitting persons to the practice of law in accordance with the Rules Governing Admission to the Utah State Bar. Those rules include a requirement that student applicants for admission be a

graduate of a law school approved by the American Bar Association (ABA). See Rule 3, Rules Governing Admission to the Utah State Bar. App. 8.

The Utah Supreme Court recognizes that a person may not be excluded from the practice of law in contravention of due process and equal protection requirements of the Fourteenth Amendment. *Petition of Randolph-Seng*, 669 P.2d 400 (Utah 1983).

B. Certiorari Should Not Be Granted

1. Introduction

Rule 10, Supreme Court Rules, make clear that a petition for a Writ of Certiorari will be granted only for "compelling reasons". The rule goes on to provide in subparts (b) and (c) that petitions arising from state courts may be appropriate where an important federal question has been decided in a way that conflicts with decisions of other state courts or with United States Courts of Appeal, where a state court has decided an important question of federal law that has not been settled by the Supreme Court or was decided in a way that conflicts with relevant decisions of the Supreme Court.

This court has declared that the principal purpose of certiorari is to resolve conflicts between courts on the meaning of provisions of federal law. *Braxton v. U.S.*, 500 U.S. 344 (1991).

An examination of the issues presented by petitioner, without exhaustively addressing the merits, shows that the petition should be denied.

2. Separation of Powers Issues Should Not Receive Review

Petitioner's first stated issue is whether the conveyance of a legislative function from the Utah legislature to the state supreme court over the practice of law constitutes a violation of the separation of powers doctrine. One searches in vain through the petition for certiorari for an explanation of how this issue falls within the criteria for granting certiorari. Petitioner's argument, beginning on p. 11 of the petition, essentially is a philosophical discussion falling woefully short of meeting the requirements for a grant of certiorari.

The argument made about separation of powers is also substantively deficient. Petitioner complains on p. 12 of his petition that the Utah legislature transferred "all of the power over the practice of law" to the Utah Supreme Court through an amendment to the Utah constitution. This premise is simply wrong beyond dispute. Article XXIII, Section 1 of the Utah Constitution shows that while the legislature may propose constitutional amendments, they are not effective until approved by a statewide referendum. App. 32. The adoption of a constitutional amendment is done by the citizens of Utah, not the Utah legislature.

Petitioner fails to show where the separation of powers argument was presented to the Utah Supreme Court and further fails to meet the fundamental requirement of Rule 10 showing that a substantial federal question is presented that ought to be resolved by the court.

Absent a specific showing that this question is appropriate for review, the court should deny consideration.

3. The Utah State Bar Relationship With The Utah Supreme Court Does Not Merit Review

The second issue raised by the petitioner is whether the Utah State Bar exercises a prejudicial advantage over opponents in litigation before the Utah Supreme Court due to the Bar's integration. A reading of the petition again fails to show that this issue is one suitable for review on certiorari under the standards of Rule 10. Petitioner identifies no conflict in decisions between courts and further fails to connect that argument to recognized constitutional doctrine.

Petitioner overlooks that when the Utah State Bar acts pursuant to the order of integration of the Utah Supreme Court that it *is* the Utah Supreme Court acting. The Utah Supreme Court describes the relationship in a case concerning attorney discipline as the Utah State Bar, when acting within the authority given by the Utah Supreme Court, acting as an "arm" of the Utah Supreme Court. *Pendleton v. Utah State Bar*, 16 P.3d 1230 (Utah 2000). See also *Black v. Clegg*, 938 P.2d 293 (Utah 1997) and *Bailey v. Utah State Bar*, 846 P.2d 1278 (Utah 1993), wherein the Utah Supreme Court found the Utah State Bar to be acting as an arm of the court pursuant to the rules of integration. The obvious practical operation of the relationship is that the Utah Supreme Court uses the Utah State Bar to carry out qualifying and administrative functions of considering applicants for admission.

The relationship between the Utah State Bar and the Utah Supreme Court is such that the petitioner's argument is really that the Supreme Court should not be allowed to utilize its own process to determine the suitability of an applicant for admission. Petitioner's argument, taken to its logical conclusion, is that the Utah Supreme Court should make decisions about admission to the Utah State Bar without any administrative assistance, thus practically reducing the process to individuals petitioning directly to the justices of the Utah Supreme Court. Petitioner fails to articulate any legally significant facts about the relationship between the Utah Supreme Court and the Utah State Bar to provide a basis for review under U.S. Supreme Court Rule 10.

4. Petitioner Has No Right To Sit For The Utah State Bar Examination Absent Full Qualification

The third question raised by the petitioner is whether he has an absolute right to sit for the Bar examination and thereby ignore and avoid the requirements for admission to the Utah Bar promulgated by the Utah Supreme Court. He advances facts and arguments in his petition explaining that he has determined himself to be qualified to practice law and therefore ought to be allowed to take the Bar examination.

This Court has recognized that a state supreme court may have rules governing bar admission that, when evenly administered, are acceptable.

For example, in *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 U.S. 232, (1957), the Court

considered the denial of admission to the practice of law by one found unfit because of past membership in the communist party. The Court reviewed constitutional law applicable to admission to the practice of law and stated that a state can require high standards of qualification provided those qualifications have a rational connection to the applicant's fitness or capacity to practice law. The requirement here that the petitioner be a graduate of an approved law school is a rational connection to the fitness of practice of law.

In *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) this Court considered claims of two persons who had been denied permission to sit for the District of Columbia Bar examination where those persons had not graduated from an ABA approved law school. The issue presented in that case was which federal court was appropriate for review of the District of Columbia Court of Appeals decision to not let the applicants take the bar examination. The Court held that denial of permission to sit for the bar examination was a judicial act which could be reviewed on certiorari. The case is important here because the Court recognized that the state interest in regulating admission to the state bar is high. *See Goldfarb v. Virginia State Bar*, 421 U.S. 773, (1975).

Similarly, in *Hoover v. Ronwin*, 466 U.S. 558 (1984), this court again recognized, in a case where one who failed a bar examination claimed the administration of admissions violated the Sherman Act, that the state courts had a strong state interest in imposing requirements for admission to the practice of law.

In summary, petitioner falls short of presenting a claim for review that he should be allowed to take the Utah Bar examination because he believes he is ready to practice law. The Utah Supreme Court has a recognized interest in establishing rational requirements which limit the right of the petitioner to be admitted to the practice of law. Petitioner fails to show that there was any consideration in his rejection by the Utah Supreme Court other than his failure to meet this rational qualification. Absent a showing, this court has nothing to review on certiorari.

5. No Due Process Issue Exists For Review

The final issue raised by the petitioner is whether the Utah Supreme Court deprived the petitioner of due process when he was "denied his day in court" or because the Utah Supreme Court "refused to refer the matter to the Bar Commission". The factual thrust of the argument appears to be that petitioner believes the Utah Supreme Court should have held an evidentiary hearing about his fitness to practice law while ignoring his admitted inability to comply with the requirement that he graduate from an approved law school. Petitioner fails again to prove any issue for review on certiorari.

The record, included in the appendix to Jensen's petition, shows that on May 2, 2001, petitioner filed a petition with the Utah Supreme Court asking a waiver of the requirement of graduation from an approved law school. The Utah Rules Governing Admission to the Utah State Bar have no exception provision for persons who believe life experience would waive the law school

requirement. The Utah State Bar filed an opposing memorandum and the petition was set on the court's routine law and motion calendar on June 18, 2001. According to Mr. Jensen in his petition on p. 8, he was uncertain of his procedural requirements and so filed a legal brief in support of the petition.

The Utah Supreme Court, without oral argument, denied the petition in an order dated June 18, 2001. Petitioner thereafter sought a review *en banc*, which was also denied in an order from the Utah Supreme Court dated July 16, 2001.

This detailed procedural history is important because it shows that the heart of the petition is to complain that there was not an oral evidentiary presentation to the Utah Supreme Court as the basis for claiming a deprivation of due process. The Utah Supreme Court had before it the verified petition and Mr. Jensen's brief at the time it refused to grant him a waiver of the law school requirement.

An examination of the petition for certiorari shows that the petitioner was not entitled to an evidentiary hearing as a matter of constitutional law. Petitioner cites to *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1963). A bar applicant in that case was denied admission to the New York Bar where he had passed the bar examination but was denied admission on grounds of character. This Court found that he had been denied due process where he was not given an opportunity to confront accusers about his character. This Court held that he was entitled to a full and fair hearing which meant that

he would be fully advised of the allegations against him and would be given an opportunity to contest them.

Willner does not stand for the proposition that petitioner here should get a hearing as the legal context is not the same. The sole grounds upon which Jensen was denied the opportunity to take the Utah State Bar examination and be considered for admission to the Bar is that he has not graduated from an approved law school. He admits that and no hearing will change that fact. What he attempts to do by this judicial process is create his own rules of admission to practice law whereby he asserts the established rules of admission should not apply to him as written and the Utah Supreme Court should therefore adjust its procedure to meet whatever contention he wants to raise.

Due process requires only that Jensen be given notice and fair opportunity to present his application. *Goldsmith v. U.S. Board of Tax Appeals, D.C.*, 270 U.S. 117 (1926). What constitutes the scope of that right is dependant upon the interest and circumstance of the dispute presented. *Cafeteria and Restaurant Workers Union Local 473, AFL-CIO) v. McElroy*, 367 U.S. 886 (1961). It is not uncommon for courts to act without oral argument or a hearing where the issues would not require it for full consideration. The principle is demonstrated well by Rule 34, Federal Rules of Appellate Procedure, which provide that oral argument is allowed except where the judges find that the facts and legal arguments are adequately presented in the written briefs. Indeed, this court's own Rule 21.3 generally denies oral argument on motions unless the court directs otherwise.

With petitioner having made a full written presentation of his argument to the Utah Supreme Court in two documents in which he admitted he did not meet the law school requirement, there is no apparent constitutional basis under due process principles to require the Utah Supreme Court to hold an evidentiary hearing. The Utah Supreme Court could apply its own rule of bar admission on Jensen's own pleadings.

II. CONCLUSION

This brief shows the Court should deny the petition for certiorari. Utah has a strong state interest in creating rules to determine the qualification of those who practice law in Utah. Petitioner clearly does not meet one of those key rules by his own admission. The Utah Supreme Court considered his written petition and supporting memorandum or brief and violated no constitutional principle when it denied his petition.

Petitioner fails to show any compelling interest of this court in becoming the repose of appeal for those who fail to meet reasonable requirements to be admitted to practice law. Jensen presents no substantial federal question or conflict between court jurisdictions that needs resolution.

The Utah State Bar respectfully requests denial of the petition.

Respectfully submitted,

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IN THE SUPREME COURT
OF THE STATE OF UTAH

In Re UTAH STATE BAR, Petitioner.	) Order Amending Rules) for Integration And) Management of the Utah) State Bar)) S.Ct. Docket No. 15436-A)

This matter originally came before the Court in a petition filed by the Board of Bar Commissioners (Board) on September 30, 1977 for approval and adoption of a "Rule for Integration of the Utah State Bar" subsequently consolidated with a Petition filed in May of 1979 by certain members of the Bar to "Adopt a Rule to Govern the Right to Practice Law in Utah Without Compulsory Integration" followed by the Legislative General Counsel filing a brief in opposition to both and asserting the Legislature's interest.

On June 30, 1981 this Court issued a PER CURIAM opinion granting the Board's petition integrating the Bar[1]. Thereafter the authority of the Court to govern the practice of law by adopting appropriate rules was incorporated in 1985 in Art. VIII, Sec. 4 of the Utah Constitution.

---

[1] *In re Integration And Governance of the Utah State Bar*, 632 P. 2d 845 (Utah 1981).

Exercising its ultimate authority to govern the practice of law without engaging in the daily management and operations of the Bar, the Court has continued to meet with the Board to develop a revised mission statement consistent with Recommendation No. 2 of the Final Report of the Utah Supreme Court's Special Task Force (Task Force), dated November 1, 1992 and to express the delegation of authority by the Court to the Board consistent with Recommendation No. 3 of the Task Force Report, and being now fully advised in the premises, hereby,

SUA SPONTE ORDERS,

1. Section (A) 1. of the Rules for Integration And Management of the Utah State Bar adopted on July 1, 1981 is hereby repealed and amended as follow:

SECTION (A) ORGANIZATION OF THE UTAH STATE BAR

1. Under the power vested to it by the Constitution and laws of the State of Utah, the Utah Supreme Court hereby creates and perpetuates under its direction and control an organization known as the Utah State bar. All persons licensed in Utah to practice shall be members of the Utah State Bar, in accordance with the rules of the Court. The Utah State Bar, a sui generis entity, may organize in any form legally recognized under the laws of Utah and may sue and be sued, may enter into contracts, and may hold property in its own name. The purposes, duties and responsibilities of the Utah State Bar include, but are not limited to, the following:

(a) To advance the administration of justice according to law;

(b) To aid the courts in carrying on the administration of justice;

(c) To regulate the admission of persons seeking to practice law;

(d) To regulate and to discipline persons practicing law;

(e) To foster and to maintain integrity, competence and public service among those practicing law;

(f) To represent the Bar before legislative, administrative and judicial bodies;

(g) To prevent the unauthorized practice of law;

(h) To promote professionalism, competence and excellence in those practicing law through continuing legal education and by other means;

(i) To provide service to the public, to the judicial system and to members of the Bar;

(j) To educate the public about the rule of law and their responsibilities under the law; and

(k) To assist members of the Bar in improving the quality and efficiency of their practice.

2. Section (C) 2. if the Rules for Integration And Management of the Utah State Bar adopted on July 1, 1981 is hereby repealed and amended as follows:

SECTION (C) 2. Board of Commissioners, Number, Term and Vacancies, Powers and Duties.

There shall be a Board of Commissioners of the Bar consisting of thirteen voting members, eleven elected lawyers and two non-lawyers members appointed by the Court. Except as otherwise provided, the term of office of each commissioner shall be three years and until a successor is elected and qualified. In the event of a lawyer vacancy in the Board, the remaining commissioners shall appoint a successor from among the practicing members of the Bar of the division from which such commissioner was elected, who shall serve until the following annual election.

The Board is granted and may exercise all powers necessary and proper to carry out the duties and responsibilities of the Utah State Bar and the purposes of these rules and shall have all authority which is not specifically reserved to the Court. The Court specifically reserves the authority to: (1) approve Bar admission and licensure fees; (2) approve all rules and regulations formulated by the Board for admissions, professional conduct, client security fund, fee arbitration, procedures of discipline, legislative activities, unauthorized practice of law, and bar examination review and appeals; (3) review all appeals from the findings of the Board on formal disciplinary matters; and (4) establish appropriate rules and regulations governing mandatory continuing legal education.

DATED this 27 day of May, 1993.

UTAH SUPREME COURT

/s/ Gordon R. Hall
Gordon R. Hall
Chief Justice

/s/ Richard C. Howe
Richard C. Howe
Associate Chief Justice

/s/ I. Daniel Stewart
I. Daniel Stewart
Justice

/s/ Christine M. Durham
Christine M. Durham
Justice

/s/ Michael D. Zimmerman
Michael D. Zimmerman
Justice

RULES GOVERNING ADMISSION TO THE UTAH STATE BAR

[SEAL]

Utah State Bar

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RULES GOVERNING ADMISSION TO THE BAR

RULE ONE
Definitions

Section 1-1. **Definitions.** As used in the rules relating to admission, the following terms shall be given the following meanings, except as otherwise provided or may result from necessary implication from the rule.

Approved Law School. An "approved law school" is one which is fully or provisionally approved by the American Bar Association pursuant to its Standards and Rules of Procedure for Approval of Law Schools.

Attorney Applicant. An "attorney applicant" is any person who satisfies the requirements of Rule 4.

Student Applicant. A "student applicant" is any applicant for admission to the Bar who does not qualify as an "attorney applicant" under Rule 4.

RULE TWO
Board of Commissioners – General Powers

Except as otherwise indicated the word "Board" as used in these rules refers to the Board of Commissioners of the Utah State Bar. For the purposes of these rules,

applicants are classified as either "student applicants" or "attorney applicants."

Section 2-1. **Admission to the Bar.** The Board shall recommend and certify to the Supreme Court for admission to the Bar such persons, and only such persons, who possess the necessary qualifications of learning, ability and character which are a prerequisite to the privilege of engaging in the practice of law, and who fulfill the requirements for admission to the bar, as provided by these rules.

Section 2-2. **Subpoena Power.** Any member of the Board, or the Executive Director or the Secretary or an Assistant Secretary thereof, shall have power to issue subpoenas for the attendance of witnesses or for he [sic] production of documentary evidence before the Board or before anyone authorized to act in its behalf.

Section 2-3. **Administration of Oaths.** Any member of the Board or the Executive Director shall have power to administer oaths in relation to any matter within the functions of the Board.

Section 2-4. **Taking of Testimony.** Any member of the Board, and any other person who has power to administer oaths, shall have power, upon order of the Board, to take testimony in reference to any matter within the function of the Board.

Section 2-5. **Regulations.** The Board is empowered to adopt and enforce such reasonable regulations and to appoint such committees in furtherance of the purpose of these rules and to facilitate their administration as may be necessary or advisable.

RULE THREE
Qualifications for Admission of Student Applicants

Section 3-1. **Requirements of Student Applicants.** To be recommended as a student applicant for admission to the Bar, a person must:

1. Have filed an application for Bar Examination and Admission to the Bar as a student applicant in accordance with Rule 5;
2. Be at least twenty-one years old;
3. Have graduated with an LL.B, J.D., or equivalent degree from an approved law school.
4. Be of good moral character and have satisfied the requirements of Rule 6;
5. Have successfully passed the Bar Examination as prescribed in Rule 7;
6. Have complied with the provisions of Rule 12 concerning enrollment fees;
7. Have successfully passed the Multistate Professional Responsibility Examination (MPRE) as prescribed in Rule 7-8.

Section 3-2. **Foreign Law School Applicants.** Applicants who have not graduated from an ABA accredited law school, but who have graduated from a foreign law school in a country where principles of English common law form the basis for the country's jurisprudence, may be recommended for admission to the Bar under the following conditions:

1. Have filed an application for Bar Examination and Admission to the bar as a foreign law school applicant in accordance with Rule 5;

2. Be at least twenty-one years old;

3. Have (a) been admitted to practice in the jurisdiction where the applicant attended law school, and (b) successfully completed, within twenty-four (24) consecutive months, not less than twenty-four (24) semester hours, or their equivalent in quarter hours, at an ABA-approved law school, including no less than one course each in constitutional law, civil procedure, criminal procedure, legal ethics and evidence.

4. Be of good moral character and have satisfied the requirements of Rule 6;

5. Have successfully passed the Bar Examination as prescribed in Rule 7;

6. Have complied with the provisions of Rule 12 concerning enrollment fees;

7. Have successfully passed the Multistate Professional Responsibility Examination (MPRE) as prescribed in Rule 7-8.

Section 3-3. **Other Foreign Law School Graduates.** All other students and graduates from foreign law schools not meeting the requirements of Section 302 may be recommended only if they have been admitted to an ABA approved law school, consistent with Standard 308 of the American Bar Association Standards for Approval of Law Schools, and have completed the required course of study resulting in a LL.B., or J.D. degree from that school.

Section 3-4. **Foreign Law Schools.** A foreign law school, for purposes of these rules, is any school located outside of the U.S. and its protectorates, and accredited by that jurisdiction's legal accreditation body, if one

exists, or who's [sic] graduates are otherwise permitted by that jurisdiction's highest court to practice law.

RULE FOUR
Qualifications for Admission of Attorney Applicants

Section 4-1. **Requirements of Attorney Applicants.** To be recommended as an attorney applicant for admission to the Bar, a person must:

1. Have filed an application for the Utah Bar Examination and Admission to the Bar as an attorney applicant in accordance with Rule 5;

2. Be at least twenty-one years old;

3. Have been admitted to the practice of law before the highest court of a sister state or the District of Columbia for no less than five years, and have been substantially and lawfully engaged in the practice of law in such jurisdiction for any four of the five years immediately preceding the filing of the application. For purposes of this rule, the practice of law includes the following activities or the equivalent thereof:

   (a) sole practitioner in a private law firm;

   (b) partner, shareholder, associate, or one of counsel in a private or public law firm;

   (c) officer of a corporation or other business organization whose principal responsibilities include rendition of legal advice and/or assistance;

   (d) government employee whose principal duties are providing legal advice to the governmental agency by which he or she is

employed or representing such agency before the courts;

(e) service in the armed forces in the Judge Advocate department in a legal capacity in any state;

(f) judge of a court of general or appellate jurisdiction requiring admission to the Bar as a qualification for admission thereof;

(g) law clerk to a judge of a court of general or appellate jurisdiction;

(h) teaching full-time in an approved law school.

4. Be of good moral character and have satisfied the requirements of Rule 6;

5 Have successfully passed the Bar Examination as prescribed in Rule 10-1;

6. Have complied with the provisions of Rule 12 concerning enrollment fees;

7. Have successfully passed the Multistate Professional Responsibility Examination (MPRE) as prescribed in Rule 7-8.

RULE FIVE
Application Forms and Fees

Each applicant of admission must file an application for examination and admission to the Utah State Bar on a form prescribed by the Board, which shall include an authorization and release to enable the Board to obtain information concerning the applicant.

Section 5-1. **Applications.** All applicants shall file completed applications for permission to take the Bar

Examination and for Admission to the practice of law in this state with the Utah State Bar office by October 1 preceding the February Bar Examination and by March 1 preceding the July Bar Examination.

Section 5-2. **Applicant Filing Fees.** Filing fees shall be established by the Board and shall be submitted with the application according to the deadlines in Section 5-1.

Permission to sit for the Utah Bar Examination may be withheld for any applicant who does not satisfy the documentation requirements ten days before the examination is to be administered.

Section 5-3. **Withdrawal of Applications.** If the application is withdrawn in writing prior to 30 days before the examination date for which the applicant has filed to sit, one-half of the filing fee shall be refunded.

RULE SIX
Character & Fitness

Section 6-1. **Standard of Character and Fitness.** An attorney's conduct should conform to the requirements of the law, both in professional service to clients and in the attorney's business and personal affairs. An attorney should be one whose record of conduct justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them. An applicant whose record manifests a significant deficiency in honesty, trustworthiness, diligence, or reliability shall be denied admission. Applicants must be approved by the Character and Fitness Committee and then approved by the Board prior to sitting for the Bar Examination.

Section 6-2. **The Investigative Process; Investigation Panel Interviews.** Investigations into the character and fitness of applicants may be informal, but shall be thorough, with the object of ascertaining the truth.

(a) The Character and Fitness Committee may conduct an investigation and may act with or without requiring a personal appearance by an applicant.

(b) At the discretion of the Character and Fitness Committee, an applicant may be required to attend an investigation panel interview conducted, by no fewer than three (3) members of the Committee. The investigation panel interview shall be informal but the applicant shall have the rights to counsel and shall be notified by mail of the general factual areas of inquiry. Documentary evidence may be provided to the Character and Fitness panel but no witnesses will be permitted to appear during the interview. The interview shall be a closed proceeding.

(c) After an investigation panel interview has been conduced the Character and Fitness Committee shall promptly notify the applicant that he or she has been approved to sit for the Bar Examination or notify the applicant by mail that the applicant has been denied and set forth generally the reasons for denial.

Section 6-3. **Formal Hearing; Applicant's Request.** In matters where the Character and Fitness Committee determines that an investigation panel interview is unnecessary, or in cases where an applicant has been denied admission by an investigation panel as outlined in this rule, the Character and Fitness Committee shall hold

A formal hearing pursuant to an applicant's request as set forth below. The formal hearing shall be a closed proceeding and may be scheduled whether or not preceded by a panel interview. A decision after a formal hearing is a prerequisite to appeal under the provisions below.

(a) If an applicant has been denied admission as outlined above, an applicant may within twenty (20) days of notice of the decision by the investigation panel request a formal hearing. The request must be made in writing and provided to the Bar's Admission Administrator.

(b) Notice of the formal hearing shall be given at least ten (10) days before the hearing via mail and shall include a statement of the preliminary factual matters of concern constituting the grounds for denial. The names of persons who provide information adverse to the applicant which was in whole or in part a basis for the denial shall be disclosed in the notice.

(c) A formal hearing shall be a *de novo* proceeding attended by no fewer than five (5) but no more than thirteen (13) Character and Fitness Committee members. The applicant has the burden of proof to establish his or her requisite character and fitness to practice law by clear and convincing evidence.

(d) The formal hearing will have a complete stenographic record made by a certified court reporter or an electronic record made by means acceptable in the courts of the State of Utah. All testimony shall be taken under oath. Although no formal rules of evidence or civil procedure will apply, an applicant has the right to counsel, the right to cross-examine witnesses, examine all evidence and the right to present witnesses and

documentary evidence. An applicant is entitled to make reasonable use of the Board's subpoena powers to compel attendance of witnesses and to adduce relevant evidence relating to matters adverse to the applicant.

(e) Written Findings of Fact and Conclusions of Law should be issued no later than forty-five (45) days after the formal hearing and subsequent briefings, if any.

Section 6-4. **Factors Related to Character and Fitness.** In addition to the standards set forth in Rules 6-1 and 6-5 the Character and Fitness Committee may use the following factors to decide whether an applicant possesses the requisite character and fitness to practice law:

(a) the applicant's lack of candor

(b) unlawful conduct

(c) academic misconduct

(d) making of false or misleading statements, including omissions

(e) misconduct in employment

(f) acts involving dishonesty, fraud, deceit or misrepresentation

(g) abuse of legal process

(h) neglect of financial responsibilities

(i) neglect of professional obligations

(j) violation of an order of a court

(k) evidence of mental or emotional instability

(l) evidence of drug or alcohol dependency

(m) denial of admission to the bar in another jurisdiction on character and fitness grounds

(n) past or pending disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction

(o) other conduct bearing upon character or fitness to practice law

In making this determination through the processes described above, the following factors should be considered in assigning weight and significance to prior conduct:

(p) the applicant's age at the time of conduct

(q) the decency of the conduct

(r) the reliability of the information concerning the conduct

(s) the seriousness of the conduct

(t) the factors underlying the conduct

(u) the cumulative effect of conduct or information

(v) the evidence of rehabilitation

(w) the applicant's positive social contributions since the conduct

(x) the applicant's candor in the admissions process

(y) the materiality of any omission or misrepresentations

Section 6-5. **Criminal Conduct; Parole, Probation and Supervised Release.**

1. An applicant convicted of a misdemeanor offense or who has entered a plea in abeyance to any

criminal offense may be asked to appear before members of the Character and Fitness Committee for an investigation panel interview or a formal hearing. In determining whether the applicant is of good character, the Committee will consider the nature and seriousness of the criminal conduct resulting in the conviction(s), mitigating and aggravating factors including completion of terms and conditions of any sentence imposed and demonstration of clearly proven rehabilitation.

2. A rebuttable presumption exists against admission of an applicant convicted of a felony offense. For purposes of this rule, a conviction includes entry of a *nolo contendre* (no contest) plea. An applicant who has been convicted of a felony offense is not eligible to apply for admission until after the date of completion of any sentence, term of probation or term of parole or supervised release whichever occurred last. Upon an applicant's eligibility, a formal hearing as set forth in these Rules before members of the Character and Fitness Committee will be held. Factors to be considered by the Committee include, but are not limited to, the nature and seriousness of the criminal conduct resulting in the conviction(s), mitigating and aggravating factors including completion of terms and conditions of a sentence imposed and demonstration of clearly proven rehabilitation.

Section 6-6. **Appeals from Final Denial; Applicant's Request.** Applicants have the right to appeal a final decision made after a formal hearing as set forth in these Rules. An applicant must file a written request to the Board of Bar Commissioners with the Bar's Admissions Administrator within twenty (20) days of the date of

notice of denial. A pre-determined panel of three (3) Board of Bar Commissioners will conduct a formal review of the final decision. The appeal hearing shall be a closed proceeding and will be limited to consideration of the record produced in the formal hearing. Oral argument will be held at the discretion of the appeal panel and only if such is deemed necessary.

(a) The decision after the formed hearing shall be affirmed if there is substantial and credible evidence to support it.

(b) Applicants will be responsible for payment and obtaining a duly certified copy of the transcript of the formal hearing proceedings or other electronic record copy as described in Rule 6-3(c).

(c) The appeal hearing panel shall within thirty (30) days after the complete formal review issue a written decision.

Section 6-7. **Reapplication After Denial.** Following the final decision, which includes the appellate decision if one was issued, re-application may be made after one year from the date of the decision unless a different time period was specified in writing.

Section 6-8. **Confidentiality; Exceptions.** All records, documents, and sources relating to the admissions process shall not be disclosed other than to the applicant and the applicant's attorney and to Committee members, admissions staff, the Bar's General Counsel, members of the Bar Commission who serve on appeals panels and in appropriate cases, the Bar's Office of Professional Conduct as contemplated by these Rules. Confidential information includes, but is not limited to the application and

supporting documents including letters of recommendation, reports and documents form other associations, agencies, employers, and courts of law. Confidential information in some instances may be disclosed under Rule 6-10.

Section 6-9. **Communications Relating to Applications.**

Letters or information relating to an applicant in which the writer requests confidentiality are to be held confidential and not placed in evidence or otherwise made available to the decision-making body or anyone else involved in a decision-making capacity with respect to the admission of the applicant. Any such body or person having knowledge of the content of the information, including members of the Board, shall withdraw from participation in the matter, and if necessary, the Board shall appoint persons necessary to replace those required to withdraw from the decision-making process.

Section 6-10. **Release of Information.** Except as otherwise authorized by order of the Utah Supreme Court, the Bar or the Character and Fitness Committee shall deny requests for confidential information but may grant the request only if made by:

(a) An entity authorized to investigate the qualifications of persons for admission to practice law; or

(b) An agency or entity authorized to investigate the qualifications of persons for government employment; or

(c) A lawyer discipline enforcement agency; or

(d) An agency or entity authorized to investigate the qualifications of judicial candidates.

If the request is granted, information shall be released only upon certification by the requesting agency or entity that the confidential information shall be used for authorized purposes only. If one of the above-enumerated entities requests confidential information, the Character and Fitness Committee or the Bar shall give written notice to the applicant that the confidential information will be disclosed within ten (10) days unless the applicant obtains an order from the Supreme Court restraining such disclosure.

RULE SEVEN
Student Bar Examination

Section 7-1. **Content.** The Student Bar Examination shall consist of such questions as the Board shall select relating to the practice of law. The essay portion of the examination shall consist of twelve questions, some of which may be taken from the Multistate Essay Examination (MEE). One essay question shall deal with Legal Ethics.

Section 7-2. **Composition.** The Student Bar Examination shall include an essay component and the Multistate Bar Examination (MBE). The MBE and essay portions ordinarily will be given over a two-day period, with one day allocated to the MBE and one day to essay questions.

Section 7-3. **Preparation of the Essay Examination.** Essay questions may be:

1) taken from the Multistate Essay Examination;

2) prepared by practitioners and/or professors of law;

3) or both.

Model answers or outlines analyzing the issues presented shall be prepared by the author of the question. The answer or outline shall be submitted with the question to the Bar Examiner Review Committee.

The test questions and model answers shall be reviewed by the Bar Examiner Review Committee. The Bar Examiner Review Committee shall be independent of the Bar Examiners and shall determine the adequacy and appropriateness of all questions and model answers. The Bar Examiner Review Committee may require the questions and model answers to be rewritten or modified.

Section 7-4. **Grading the Essay Examination.** Essay answers shall be graded on a five-point scale. Each answer shall be graded on the following basis:

(A) No credit shall be given to an unanswered question or to a nonresponsive answer;

(B) A grade of 1 shall be given to an answer that is well below average;

(C) A grade of 2 shall be given to an answer that is below average;

(D) A grade of 3 shall be given to an answer that is average;

(E) A grade of 4 shall be given to an answer that is above average;

(F) A grade of 5 shall be given to an answer that is well above average.

Section 7-5. **Uniformity of Grading.** In order to assure maximum fairness and uniformity in grading, the Board shall prescribe procedures and standards for grading to be used by all graders.

Section 7-6. **Method for Combining Scores.** After all essay questions are graded, the grades received shall be added together for each applicant and scaled to the MBE portion of the examination. MBE scaled scores and essay scaled scores shall be combined according to the standard deviation method. An applicant who receives a combined score of 130 or above by this method passes the Bar Examination.

Section 7-7. **Administration of Essay Examinations Under Special Circumstances.** Applicants who have medical, physical, or cognitive disabilities may request examinations be administered under special circumstances to accommodate their disability. Cognitive disabilities do not include "English as a second language." Such requests shall be made in writing at the date of application. Each request shall be reviewed and any special accommodation shall be made on an individual basis.

Section 7-8. **Multistate Professional Responsibility Examination. (MPRE).** Each applicant must achieve an MPRE scaled score of 80 within two years before or following the date of the examination and provide proof thereof.

The MPRE is administered by the National Conference of Bar Examiners. Any person seeking to take the MPRE shall file an application with and pay the fee specified by the National Conference of Bar Examiners.

To be eligible to have his or her score on the MPRE accepted by the Board as satisfying the requirements of this rule, a student applicant must have completed one year of law school.

RULE EIGHT
Retaking of Examination

Section 8-1. **Students Failing Bar Examination.** All applicants failing will be required to retake the complete Bar Examination. Scores on the essay or MBE portions of the examination will not be carried over.

RULE NINE
Transferability of Scores

Section 9-1. Scores achieved on the Multistate Bar Examination (MBE) administered in a jurisdiction other than Utah will not be accepted unless the examination is taken concurrently with the Utah examination.

RULE TEN
Attorney Examination

Section 10-1. **Content.** The Attorney Examination consists of the essay portion of the Student Bar Examination and will [sic] administered the same date and time as the Student Bar Examination. The Attorney Examination will be graded and scaled to the MBE according to the procedures set forth in Rule 7-6. The passing applicant must achieve a score of 130 on the examination.

Section 10-3. **Failing Applicant.** An applicant who fails the Attorney Examination may sit for subsequent

examinations, including successive examinations, upon payment of any required fees.

RULE ELEVEN
Unsuccessful Applicants; Right of Inspection

Section 11-1. **Test Inspection.** Examinations shall be retained for not less than six (6) months after the date that examination results have been announced. An unsuccessful applicant shall be entitled to a reasonable inspection of:

(1) the essay questions;

(2) the applicant's answers to the essay portion of the examination;

(3) sample answers for each question.

This rule does not permit applicants to inspect the Multi-State Bar Examination.

Section 11-2. **Bar Examination Grading.** The Board shall only review petitions of failing applicants who claim that this failure was because of a substantial irregularity in the administration of the examination which resulted in manifest unfairness or because of mathematical inaccuracy in the scoring process. The petition must be filed in writing by the applicant within thirty (30) days after notice to the applicant of examination results.

Section 11-3. **Bar Examination Review and Appeal Procedure.** Any person who has failed to pass the Utah State Bar Examination may, within thirty (30) days after service of written notice thereof, file a petition with the Executive Director of the Utah State Bar directed to the Board of Commissioners, requesting a review of the

determination that petitioner has failed the Bar Examination. The petition shall contain a short and plain statement of the claim showing that the petitioner is entitled to relief based on Rule 11 of the Rules Governing Admission to the Utah State Bar. **Relief shall be granted only upon showing that the petitioner failed the examination because of a substantial irregularity in the administration of the examination which resulted in manifest unfairness or because of mathematical inaccuracy in the scoring process.** The Board of Bar Commissioners and/or any review committee designated by it shall not reread examination answers or substitute their judgment for that of the Committee of Bar Examiners in accordance with the Rules Governing Admission.

(a) Unless the President of the Utah State Bar appoints a special review committee, the review committee shall consist of nor more than three (3) members of the Admissions Committee. The committee shall review all relevant evidence and may conduct a hearing if necessary. The chairperson of the committee shall notify the petitioner and the Deputy General Counsel in Charge of Admissions in writing of the time and place set for the hearing, if one is required. Petitioners setting forth common issues may be consolidated in whole or in part as determined by the chairperson of the review committee. The committee shall file with a panel of three (3) members of the Board of Commissioners its written findings of fact and recommendations on all petitioners. The Board of Commissioners panel shall make its decision on each petition and shall notify each petitioner in writing of its decision in the form of Findings of Fact, Conclusions of Law and Final Decision.

(b) Within thirty (30) days after the date of the Final Decision, the petitioner may appeal to the Utah Supreme Court by filing a written petition for review with the clerk of the Supreme Court. At the time of filing the petition for review, the petitioner shall pay the required filing fee to the clerk of the Supreme Court. The clerk will not accept a petition for review unless the filing fee is paid.

(c) The petition for review shall state the name of the petitioner and shall designate the Utah State Bar as respondent. The petition for review must contain the following: a statement of the issues presented and the relief sought; a statement of the facts necessary to an understanding of the issues presented by the petitioner; copies of the Final Decision and any other documents considered by the panel of the Board of Commissioners in making its decision; and a certificate reflecting service of the petition for review upon the Executive Director of the Utah State Bar.

(d) The record of proceedings shall be prepared by the Executive Director and shall be filed with the clerk of the Supreme Court within fifteen (15) days following the filing of the petition for review. Within thirty (30) days after service of the petition on the Executive Director of the Utah State Bar, the Utah State Bar, as respondent, shall file a response to the petition for review with the clerk of the Supreme Court. A copy of the response shall be mailed at the time of filing to the petitioner by respondent.

(e) The clerk of the Supreme Court will notify the parties if any additional briefing or oral argument is required. Upon entry of the Court's

decision, the clerk shall give notice of the decision to petitioner and respondent.

RULE TWELVE
Certificate of Admission, Membership and Fees

Section 12-1. **Fees.** Upon notification that the Board has approved the applicant for admission and before an [sic] motion is made to the Supreme Court for admission, the applicant shall pay to the Utah State Bar the fee for an active or inactive member as appropriate, and also the admission fee of fifty dollars ($50.00) to be transmitted by the Utah State Bar to the Clerk of the Supreme Court upon the issuance of the applicant's Certificate of Admission.

Section 12-2. **Non-compliance.** If the applicant fails to comply with the preceding section and does not appear for admission within six (6) months after being called to appear before the Supreme Court for admission, the approve [sic] of his or her application for admission to the Bar shall be deemed to be withdrawn. The Board may reapprove such application upon a satisfactory showing of the qualifications of the applicant at the time he appears for admission to the Bar, or may grant an extension of the time for making appearance upon petition.

Section 12-3. **There are two admission ceremonies each calendar year.** To be admitted to the Utah State Bar you must participate in an Admission Ceremony and pay the proper fees so that you [sic] name can be put on the motion submitted to the court the day of the ceremony.

No other motions for admission to the Bar will be submitted to the court until the next scheduled Admissions Ceremony. NO EXCEPTIONS.

RULE THIRTEEN
Practice of Law in Utah

Section 13-1. **Practice of Law.** To practice law in Utah, an attorney must be an active member of and in good standing with the Utah State Bar.

Section 13-2. **Admissions Pro Hac Vice.** For the purpose of an individual case, no member of the bar of any jurisdiction may appear in the courts of this state without associating a licensed active attorney upon whom pleading and other papers may be served and who shall be responsible for the ethical conduct of such attorney under the provisions of the Rules of Conduct of the Utah State Bar.

RULE FOURTEEN
Readmission after Resignation or Disbarment

Section 14-1. **Readmission after Resignation.** Readmission subsequent to the resignation of a member of the Bar shall be by petition in writing verified by the petitioner, addressed to the Board and filed with the Executive Director. The petition shall set forth the name, age, residence and address of the petitioner, his residence and occupation during the period subsequent to his resignation, the reasons for this resignation and a copy of the Order of the Supreme Court, if any, with respect to the

resignation. The petition must be accompanied by a filing fee of $200.00.

Section 14-2. **Readmission after Disbarment.** An applicant for readmission to the Bar after disbarment shall satisfy all requirements of Rule 3 as stated above, and shall satisfy all other requirements imposed by the Supreme Court.

RULE FIFTEEN
New Lawyer Continuing Legal Education
Effective July 1991

Section 15-1. **The New Lawyer Continuing Legal Education program** is divided into three parts, and is designed to ease the transition into practice. All Utah Attorneys who have an active license are required to comply with Mandatory Continuing Legal Education "MCLE". As stated in Rule 3 of the MCLE Rules, new admittess will meet their first two-year requirement through the New Lawyer Continuing Legal Education "NLCLE" program. The program is as follows:

a. A one day "NLCLE" program which is given annually.

b. Four monthly "NLCLE" workshops (three hours each) that will be sponsored by the Utah State Bar.

c. Twelve hours of approved live continuing legal education.

If you serve as a judicial law clerk, practice law out-of-state, have an inactive licenses, [sic] or have a hardship

you may apply for an extension or a waiver. For further information, please contact Sydnie W. Kuhre at 531-9095.

RULE SIXTEEN
Licensing of Foreign Legal Consultants

Section 16-1. **General Regulation as to Licensing.** IN ITS DISCRETION, the Utah Supreme Court may license to practice in this State as a Foreign Legal Consultant, without examination, an applicant who:

(a) is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;

(b) possesses the good moral character and general fitness requisite for a member of the Utah State Bar; and

(c) intends to practice as a legal consultant in this State and to maintain an office in this State for that purpose.

(d) has passed the MultiState Professional Responsibility Examination.

Section 16-2. **Proof Required.** An applicant under this Rule shall file with the Utah State Bar:

(a) a certificate from the professional body or public authority in such foreign country having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice and the date thereof, and as to her or

his good standing as such attorney or counsel at law or the equivalent;

(b) a duly authenticated English translation of such certificate, if it is not in English; and

(c) such other evidence as to the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of Sections 1 and 6 of this Rules [sic] as the Utah Supreme Court may require.

UTAH CONSTITUTION

ARTICLE XXIII

Section 1. [Amendments: proposal, election.]

Any amendment or amendments to this Constitution may be proposed in either house of the Legislature, and if two-thirds of all the members elected to each of the two houses, shall vote in favor thereof, such proposed amendment or amendments shall be entered on their respective journals with the yeas and nays taken thereon; and the Legislature shall cause the same to be published in at least one newspaper in every county of the state, where a newspaper is published, for two months immediately preceding the next general election, at which time the said amendment or amendments shall be submitted to the electors of the state for their approval or rejection, and if a majority of the electors voting thereon shall approve the same, such amendment or amendments shall become part of this Constitution.

The revision or amendment of an entire article or the addition of a new article to this Constitution may be proposed as a single amendment and may be submitted to the electors as a single question or proposition. Such amendment may relate to one subject, or any number of subjects, and may modify, or repeal provisions contained in other articles of the Constitution, if such provisions are germane to the subject matter of the article being revised, amended or being proposed as a new article.

Sec. 2. [Revision of the Constitution.]

Whenever two-thirds of the members, elected to each branch of the Legislature, shall deem it necessary to call a convention to revise or amend this Constitution, they shall recommend to the electors to vote, at the next general election, for or against a convention, and, if a majority of all the electors, voting at such election, shall vote for a convention, the Legislature, at its next session, shall provide by law for calling the same. The convention shall consist of not less than the number of members in both branches of the Legislature.

Sec. 3. [Submission to electors.]

No Constitution, or amendments adopted by such convention, shall have validity until submitted to, and adopted by, a majority of the electors of the State voting at the next general election.